

Sacramento and Marin Superior Courts

Both Courts Need to Ensure That Family Court Appointees Have Necessary Qualifications, Improve Administrative Policies and Procedures, and Comply With Laws and Rules

January 2011 Report 2009-109



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January 20, 2011

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The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

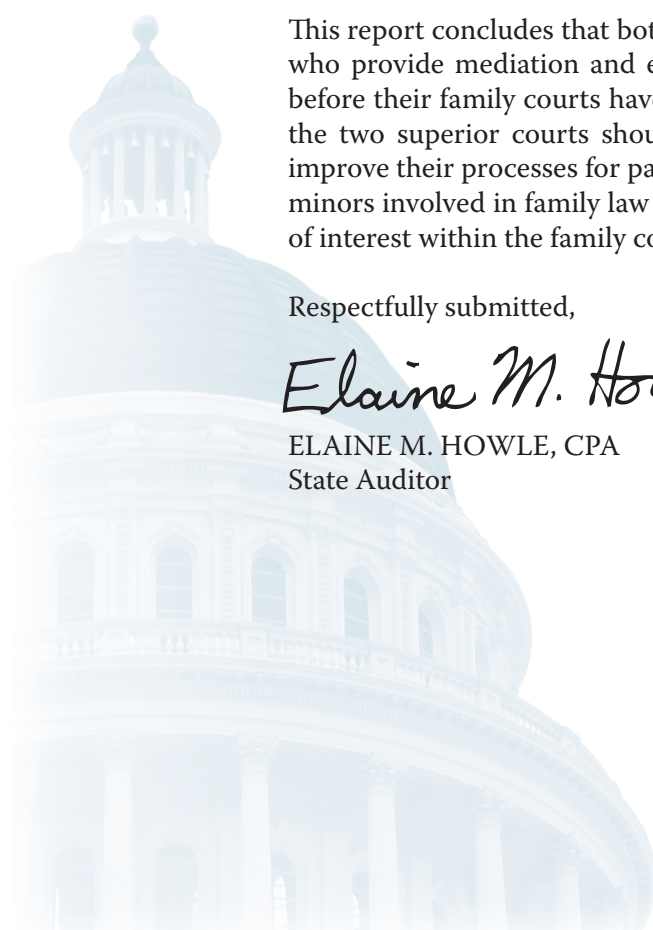
As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the Sacramento County Superior Court and the Marin County Superior Court and their departments' or courtrooms' use of court appointees in child custody disputes, which are governed by the California Family Code and the California Rules of Court adopted by the Judicial Council of California.

This report concludes that both superior courts need to do more to ensure that the individuals who provide mediation and evaluation services and who act as counsel for minors in cases before their family courts have the necessary qualifications and required training. In addition, the two superior courts should follow their established processes for handling complaints, improve their processes for payments related to counsel appointed to represent the interests of minors involved in family law cases, and strengthen their procedures for dealing with conflicts of interest within the family courts.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor



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Summary

Results in Brief

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits (bureau) to audit the California Family Court System with respect to the use of court appointees in child custody disputes. Specifically, the audit committee directed the bureau to review the Sacramento County Superior Court (Sacramento Superior Court) and the Marin County Superior Court (Marin Superior Court). Both superior courts have departments or courtrooms dedicated to issues governed by the California Family Code. Cases involving issues governed by the California Family Code are commonly referred to as matters of *family law*, and courtrooms handling those cases are generally referred to as *family courts*. Our audit found that both superior courts need to do more to ensure that the individuals who provide such services as mediation in cases before their family courts can demonstrate that they have the necessary qualifications and required training. In addition, the two superior courts need to follow their established processes for handling complaints, to improve their processes for payments related to counsel appointed to represent the interests of minors involved in family law cases, and to strengthen their procedures for dealing with conflicts of interest within the family courts.

One type of issue that a family court decides is child custody and visitation. A family court must order mediation in *contested* cases involving child custody and visitation, or those cases in which parents or others (referred to as *parties*) do not agree on the party with whom a child will live or on how much time the other party will spend with the child. California (State) law requires each family court to make a mediator available. The goals of mediation, as outlined in state law, are to reduce acrimony between the parties, to develop an agreement assuring the child close and continuing contact with the parties, and to settle the issue of visitation in a manner that is in the best interest of the child.

In addition to mediation, the family court has the discretion to appoint a child custody evaluator to conduct an evaluation in cases in which the family court determines that doing so is in the best interest of the child. The evaluator's report may be used as evidence and considered by the family court when it makes its custody and visitation order. The family court also has the discretion to appoint an attorney, referred to as *minor's counsel*, to represent the interest of the child in a custody or visitation proceeding when the family court determines that doing so is in the child's best interest.

Audit Highlights . . .

Our review of the Sacramento County Superior Court and the Marin County Superior Court's use of court appointees in child custody disputes revealed the following:

» The Sacramento family court:

- *Did not have training documents and other information that could demonstrate that its staff met the minimum qualifications and training requirements to perform mediations and evaluations.*
- *Does not always ensure that its evaluators satisfy the qualifications required by law.*
- *Has not adhered to the superior court's established employee appraisal policy.*
- *Lacks documentation demonstrating that the private mediators, private evaluators, and minor's counsel on its lists of professionals it deems qualified and some it has appointed have necessary qualifications.*
- *Inconsistently followed its established process for dealing with complaints about its mediators.*

» The Marin family court:

- *Could not demonstrate to us that all of the seven mediators on staff during the period we audited fulfilled the minimum qualifications initial training and continuing education to perform mediations.*

continued on next page . . .

- *Could not demonstrate that the private evaluators it appointed to the five cases we reviewed always provided the court with declarations of their qualifications as required.*
- *Did not ensure that all minor's counsel appointed by the family court filed the required declarations of qualifications promptly.*

» *The Sacramento superior court:*

- *Inconsistently complies with state law and court rules for paying minor's counsel.*
- *Has a weak process for reviewing and approving minor's counsel invoices.*

» *Both superior courts:*

- *Did not log complaints about private mediators and evaluators received during the four-year period that we audited.*
- *Need to strengthen their policies for dealing with conflicts of interest.*
- *Did not ensure that their local rules include all the rules that are required.*

The Sacramento Superior Court includes the Family and Children department (Sacramento family court). The staff at the Sacramento family court's Office of Family Court Services (Sacramento FCS) perform mediations as well as certain evaluations that the family court may order. Because they do so, the staff are subject to several minimum qualifications and training requirements specified in state law and the California Rules of Court (court rules). Covering the four years from April 1, 2006, through March 31, 2010, our audit found that any review of the qualifications of Sacramento FCS staff had limitations because the Sacramento FCS was missing training documents and other information that could demonstrate that its staff met the minimum qualifications and training requirements to perform mediations and evaluations. Seven of the FCS's 20 mediators appeared not to possess the minimum qualifications or training. For example, one FCS mediator appeared not to meet the minimum qualification of two years' experience in counseling, psychotherapy, or both at the time of hire. Moreover, the Sacramento FCS does not always comply with rules designed to establish that its evaluators are qualified. For example, each FCS evaluator must provide an annual declaration certifying his or her qualifications; this declaration is then submitted to the family court for a judge's signature. However, the FCS failed to submit the declarations to the family court for seven of the nine cases we reviewed. Finally, since 2008, the Sacramento FCS has not adhered to the Sacramento Superior Court's established employee appraisal policy intended to document employees' duties, evaluate their performance, and assist in employee development. The Sacramento family court, therefore, cannot be certain that its FCS staff members who perform mediations and evaluations possess the necessary skills or perform their duties at a satisfactory level to guide the parties through mediation effectively or to assess properly a family's condition and ensure that the outcome is in the best interests of the children.

The Sacramento family court also lacks such documentation as applications, training records, or declarations demonstrating that the private mediators, private evaluators, and minor's counsel on its lists of professionals it has deemed qualified and some it has appointed have necessary qualifications. Our legal counsel advised us that neither state law nor court rules require the family court to keep information on the qualifications of private mediators and private evaluators. However, the lack of documentation is troublesome because—during the four-year period covered by our audit—four of the nine private mediators we reviewed performed mediations for 22 contested child custody and visitation cases on behalf of the Sacramento FCS.

For the private evaluators, the Sacramento family court provided an application and the training records for only one of the five evaluators we selected for review. In examining these records, we found that the evaluator did not meet all of the training requirements. The court rules also require the use of a declaration certifying that an individual appointed as minor's counsel possesses the minimum qualifications and education, training, and experience requirements. Yet three of the five case files we reviewed did not contain minor's counsel declarations of qualifications. Consequently, the family court lacks assurance that these professionals have met the requisite minimum qualifications and undergone necessary training so that they can perform mediations, complete evaluations, or act as counsel for a child.

The Marin Superior Court includes the Family Court department (Marin family court). Unlike the Sacramento family court, the Marin family court uses the staff in its FCS to perform mediations only. Yet the Marin FCS could not demonstrate to us that all of its seven mediators on staff during the period we audited fulfilled the minimum qualifications, initial training, and continuing education requirements to perform mediations. For example, we found that for four of the seven mediators, the Marin FCS did not have documentation to show that these individuals completed the initial training. Before hiring these mediators, who were employed previously by other courts and were performing mediations, the Marin Superior Court did not verify that the mediators had met the initial training requirements. Consequently, the Marin family court cannot be certain that its FCS mediators are fully qualified and trained to perform mediation services for matters of family law. However, the former manager for the Marin FCS did adhere to the superior court's established personnel plan and policies by completing necessary appraisal reports. As a result, the reports assist the FCS mediators in developing as employees and in understanding the requirements of their jobs.

In addition, the Marin family court could not demonstrate that the private evaluators it appointed to the five cases we reviewed always provided the court with declarations of their qualifications within 10 days of their appointment to a case. Moreover, during the four-year period that we audited, not all of the minor's counsel that the family court appointed filed the required declarations of their qualifications promptly. The declaration is key for assuring the family court that the attorney is qualified to represent the interest of the minor. As a result, the Marin family court cannot be certain that the evaluators and minor's counsel it appoints are qualified to provide evaluations and legal services.

The Sacramento FCS also followed inconsistently its established process for dealing with complaints about its mediators. In addition, the former manager for the Marin FCS failed to document whether or not he consulted with the mediator during the investigation for each of the eight complaints we reviewed. As a result, the Sacramento family court cannot ensure that it reviews and responds to all complaints that it receives regarding its mediators, and the Marin family court cannot ensure that it thoroughly investigates the complaints it receives. Finally, because neither the Sacramento FCS nor the Marin FCS kept a log, the family courts could not assure us of the total number of complaints they received during the four-year period that we audited.

Both superior courts could also improve their processes for handling complaints about private mediators and evaluators. Because neither family court kept a log, the two courts could not assure us of the total number of complaints they received during the four-year period covered by the audit. The Marin family court asserted that it received one complaint about an evaluator during this period, and our review revealed that it did not follow the established process for this complaint. By not following the complaint process, the Marin family court exposes itself to criticism. We found that the Sacramento family court generally followed the established process in handling the five complaints against private mediators and evaluators it asserted were filed during the four-year period covered by the audit. However, the Sacramento Superior Court changed the local rules for 2010 to eliminate the peer review, a vital part of the complaint process, and it is unclear whether key steps that a peer review committee might perform will continue to occur under the new process.

The Sacramento family court also does not always use the standard form that the court rules require when ordering evaluations that the FCS staff will perform. Because the standard form outlines the parties' responsibility for paying the cost of the evaluation, the Sacramento family court cannot be sure that the parties are aware of and accountable for their share of these costs. The Sacramento Superior Court's accounting procedures related to billing for certain evaluations do not include important steps, such as verifying the proper allocation of costs between the parties. In addition, it has failed to collect almost two-thirds, or roughly \$68,300, for the evaluations it billed for during the four-year period that we reviewed. Finally, the Sacramento Superior Court lacks a written policy and procedures for reviewing periodically its hourly rate for evaluations. However, the Sacramento Superior Court's executive officer stated that the superior court will develop procedures to assess the rate annually.

The Sacramento Superior Court does not consistently comply with state law and court rules for paying for minor's counsel. If a family court finds the parties unable to pay for minor's counsel, the superior court becomes the payer of last resort. For the four-year period covered by our audit, the Sacramento Superior Court reported that it paid minor's counsel more than \$1 million. During our review of 29 of the 47 cases that the Sacramento Superior Court's accounting manager determined were instances in which the superior court paid minor's counsel costs, we found that for six cases the Sacramento family court had not made the necessary determination about the parties' ability to pay for minor's counsel. Therefore, without a record of the court's findings for these six cases, we could not determine what portion of the roughly \$8,500 should have been borne by the parties.

Moreover, the Sacramento Superior Court's process for reviewing and approving minor's counsel invoices is weak, and as a result the court paid more than \$175 in costs for three of five minor's counsel invoices we reviewed that are not reimbursable under the Sacramento Superior Court's policy. The Marin Superior Court could also improve its payments to minor's counsel by establishing a policy that outlines the costs it will reimburse.

Although it has a written policy to mitigate potential conflicts of interest, the Marin Superior Court could strengthen its policy by specifying that potential conflicts of interest be put in writing and by indicating how the court will track the final disposition of the potential conflict. For its part, the Sacramento FCS follows a practice for dealing with conflicts of interest that is different from its written conflict-of-interest policy. Finally, for the four-year period that we reviewed, the Sacramento and Marin superior courts did not ensure that their local rules include all the rules that are required.

Recommendations

To ensure that its FCS staff are qualified, the Sacramento superior and family courts should do the following:

- Take all reasonable steps to ensure that all staff performing mediations or evaluations meet the minimum qualifications and training requirements before assigning them to future mediations or evaluations. If necessary, and as soon as reasonably possible, the court should require the FCS mediators and evaluators to take additional education or training courses to compensate for the minimum qualifications and training requirements that were not met.

- Develop a policy to retain training completion records for at least as long as a Sacramento FCS mediator/evaluator is a court employee.
- Develop processes to ensure that all annual declarations of qualifications for evaluators are signed.

To make certain that it assists FCS staff in developing their skills and improving their job performance, the Sacramento FCS should adhere to the superior court's employee appraisal policy.

To ensure that its private mediators and evaluators meet the minimum qualifications and training requirements before appointment, the Sacramento family court should take these steps:

- Obtaining any missing applications and training records before appointing the mediators and evaluators whose materials are missing to future cases.
- Creating a record retention policy to retain the applications and training records related to private mediators and evaluators on its panel list for as long as they remain on the list.

The Sacramento family court should ensure that minor's counsel submit the required declaration about their qualifications, education, training, and experience.

The Marin superior and family courts should take all reasonable steps to ensure that the Marin FCS mediators meet all of the minimum qualifications and training requirements, including verifying the initial training of those FCS mediators hired who have worked at other superior courts.

The Marin family court should verify that the private evaluators and minor's counsel it appoints provide the court with their required declarations of qualifications and do so within the specified time frame.

To make certain that they track all complaints properly and review them promptly, the Sacramento and Marin FCS and family courts should follow their established complaint processes and keep a log of all complaints they receive.

To ensure that it provides transparency for the parties, the Sacramento Superior Court should develop a local rule that defines its process for receiving, reviewing, and resolving complaints against private mediators and evaluators.

To comply with court rules for ordering evaluations, the Sacramento family court should ensure that it is using the standard form and that the form includes an allocation of costs between the parties.

To strengthen its accounting procedures for the evaluations the FCS performs, the Sacramento Superior Court should do the following:

- Update its accounting procedures related to billing FCS evaluation costs, to include steps for verifying the proper allocation of costs between the parties.
- Update its process for collecting amounts it is owed for evaluations.
- Develop a policy for periodically reviewing the hourly rate it charges for evaluations.

To strengthen its process related to minor's counsel fees, the Sacramento family and superior courts should take these actions:

- Verifying that determinations regarding the parties' ability to pay are made in accordance with court rules and are properly reflected in the orders appointing the minor's counsel.
- Ensuring that accounting follows the appropriate superior court policy when reviewing minor's counsel costs and does not pay costs that are not allowed by the policy.
- Taking necessary steps to collect minor's counsel costs that accounting has paid improperly.

To make certain that it reimburses only appropriate and necessary minor's counsel costs, the Marin Superior Court should develop a policy outlining what costs it will reimburse.

To make its conflict-of-interest policy more effective, the Marin Superior Court should modify its policy to include documenting potential conflicts of interest in writing and tracking their final disposition.

To make its conflict-of-interest process more effective, the Sacramento family court should update its conflict-of-interest policy to mirror its practice.

The Sacramento and Marin superior courts should develop and implement processes to review the court rules periodically to ensure that their local rules reflect all required rules.

Agency Comments

The Sacramento Superior Court stated that it was largely in agreement with the report's recommendations and has already begun the process of implementing the great majority of them. The court also stated that it is taking other recommendations under consideration, but some of them will likely prove difficult to implement due to a lack of resources.

The Marin Superior Court stated that it believed many of the findings and recommendations were focused primarily on ministerial tasks. Further, the court expressed an opinion that eight of the 13 recommendations are suggested changes to existing practices that are not governed by laws, rules of court, or any other directives. The court stated that, although it intends to implement the recommended changes and has either already implemented a new process or is engaged in developing a new rule or protocol, it questions whether some of the recommendations actually enhance internal controls and accountability.

Introduction

Background

California (State) has 58 counties, and each county has a superior court that is responsible for serving as the trial court for that county. Since 1997 the trial courts have received funding from the State instead of from the counties. Specifically, the Legislature appropriates funds to support the judicial branch, which includes the Judicial Council of California (Judicial Council). Led by the chief justice of the Supreme Court of California, the Judicial Council is a multi-member body that sets policy for the judicial branch.

The California Constitution authorizes the Judicial Council to adopt rules of practice and procedure for the courts. These rules, known as the California Rules of Court (court rules), generally have the force and effect of law as long as they are consistent with state law. However, in the area of family law, state law allows a court rule that pertains exclusively to family law to have the force and effect of law even when the court rule may be inconsistent with state law. The public policy rationale for this provision is that the courts need to have the flexibility to adapt to changing social circumstances when hearing family law matters. In addition, the courts may adopt local rules, including local rules pertaining to family law matters, as long as those rules are not inconsistent with state law or the court rules.

The Administrative Office of the Courts (AOC) serves as the Judicial Council's staff agency. The AOC is responsible for implementing the Judicial Council's policies through programs and services for the judicial system, including California's courts. The AOC has a center dedicated to issues related to the needs of families and children, and the center is responsible for approving the training that certain family law professionals must receive.

Mediation and Other Services That a Family Court May Order to Resolve Contested Child Custody and Visitation Issues

State law gives every superior court in California jurisdiction over proceedings involving issues governed by the Family Code. Cases involving issues governed by the Family Code are commonly referred to as *family law* matters, and many superior courts have courtrooms or departments dedicated to adjudicating such matters. Those courtrooms are generally referred to as *family courts*. Parents and others in a family law matter are referred to as *parties*. Judges assigned to the family courts decide various family law matters, such as the dissolution of marriages. In certain family law proceedings, and where child custody or a determination of the

legal relationship between natural or adoptive parents and a child is at issue, the family court may issue an order for child custody and visitation.

The Family Code requires family courts to design all child custody and visitation orders to reflect what is in the best interest of the child. To determine the child's best interest, the family court must consider the child's health, safety, and welfare; any history of domestic violence, including child abuse, committed by the party seeking custody; and the nature and amount of contact the child has with the parties, among other things. In some cases, the parties may agree on a custody and visitation arrangement. However, when the parties disagree as to the appropriate child custody and visitation arrangement, the case involves a dispute or contested custody and visitation.

California is commonly known as a *mandatory mediation state* because a family court must order mediation when one or both parties in a family law matter contest the custody or visitation rights of the other. State law outlines the goals of mediation, which are to reduce the acrimony that may exist between the parties, to develop an agreement assuring the child close and continuing contact with the parties, and to settle the issue of visitation in a manner that is in the best interest of the child. State law requires each family court to make a mediator available. The mediator may be a member of the family court's professional staff or any other person or agency designated by the family court. For example, the parties may choose to use a mediator in private practice. In either circumstance, the mediator must meet certain minimum qualifications and training, as established in the court rules and state law.

In addition to mediation, in any case involving contested custody or visitation, the family court has the discretion to appoint a child custody evaluator to conduct an evaluation if the family court determines that it is in the best interest of the child. Evaluators provide written reports to the family court and to the parties when the family court requests them. The reports may be taken into evidence and considered by the family court when it makes its custody and visitation order. Child custody evaluators may be connected to the court through their employment by the court or by their participation on a court-approved "panel," or they may be purely private evaluators. Like mediators, evaluators who perform evaluations in family law matters must generally meet certain minimum qualifications and training, as established in the court rules and state law.

Generally speaking, the mandated training for mediators and evaluators is intended to equip them with the professional skills necessary to determine and make recommendations to the family

court regarding the custody and visitation arrangement that is in the best interest of the child. The training involves a particular emphasis on issues relating to domestic violence and child sexual abuse. Both mediators and evaluators, whether court-connected or private, must obtain initial training before they can be assigned to cases, and they must participate in additional continuing education training to continue to be eligible for appointment to cases.

The family court also has the discretion to appoint an attorney to represent the interest of the child in a custody or visitation proceeding when the family court determines that doing so is in the child's best interest. The attorney, referred to as *minor's counsel*, must gather and present to the family court facts that bear on the best interest of the child, including, where appropriate under the law, the child's wishes regarding the custody and visitation determination. Attorneys appointed as minor's counsel are entitled to payment for reasonable compensation and expenses, as determined by the family court. The family court is required to determine whether the parties in a case are able to pay all or a portion of the expenses for minor's counsel. If the family court ascertains that the parties cannot pay, the county pays the attorney's compensation and expenses.¹

Marin County Superior Court

The Marin County Superior Court (Marin Superior Court) consists of 15 court departments, including the Family Court department (Marin family court). In 2010 the Marin family court comprised one judge and one commissioner and had the same jurisdiction that all courts share in family law matters, as discussed in the Background section of this report. From April 1, 2006, through March 31, 2010—the four-year period we reviewed—the Marin Superior court opened 2,352 cases that involved child custody and visitation. We were able to determine that the court ordered mediation for 635 of these cases, which indicates that the cases were contested.² Within the Marin family court is the Office of Family Court Services (FCS). As of January 2010 the Marin FCS had three professional staff members who performed only child custody and visitation mediations. According to the former supervising family court judge and data given to us by the court's executive officer, the family court appointed to contested child custody and

¹ The California Family Code, Section 3153(b)(3), states that the county will pay these costs. However, since 1997 trial courts have received funding from the State instead of from the counties.

² The number of cases was obtained from the Marin Superior Court's Beacon case management database. Please refer to the Scope and Methodology section of this report for the Bureau of State Audits' data reliability assessment of this database.

visitation cases eight private evaluators and four minor's counsel during the period covered by our audit, but the family court did not appoint any private mediators.

The Marin Family Court's Rationale for Making Court Appointments

The Marin Superior Court's former supervising family court judge stated that it is difficult to generalize about the circumstances that would cause a judicial officer to appoint a mediator, an evaluator, or minor's counsel in a contested child custody and visitation case. The former supervising family court judge explained that in all but one of the few known cases in which the judicial officer appointed evaluators, the judicial officer ordered the appointments following requests from parents who agreed to an evaluator. In the one known instance in which the judicial officer ordered an evaluation without the parents' agreement, the judicial officer exercised judicial discretion in making the appointment. Further, the former supervising family court judge stated that the family court does not capture data on the types of cases in which it is more likely to require court appointments because the need for court appointments is driven by judicial assessments of the specific factors and circumstances of particular cases.

The Marin Family Court's Process for Identifying Professionals in Private Practice Who Qualify for Appointment

The former Marin supervising family court judge explained how the family court identifies professionals in private practice who are qualified for appointment to a contested child custody and visitation case. The former supervising family court judge stated that the court follows the procedures set forth in the court rules and does not need a local policy or procedures to reiterate the court rules' directives. For example, the court rules require a declaration regarding qualifications from both private evaluators and minor's counsel before these professionals commence any work. The former Marin supervising family court judge stated that with very few exceptions, the parties select a qualified evaluator after consulting with their attorneys and that in all but one known case during the period we reviewed, the court's role has been ordering the appointment of an evaluator selected by the parties following review of the parties' signed agreement. Further, the former Marin supervising family court judge stated that although the court takes into consideration the factors set forth in the court rules for making appointments of minor's counsel, the court's rationale for such appointments depends on case-specific facts and circumstances that are before the court, and the appointments are solely within the province of judicial discretion.

Regarding how the family court assesses each professional's qualifications before making an appointment, the former Marin supervising family court judge reiterated that no rules require that the court conduct such an assessment before making an appointment. The judge said that court rules do require that the court appointee submit—within 10 days of his or her appointment—a declaration signed under penalty of perjury affirming that he or she is qualified to take an appointment. The former Marin supervising family court judge further stated that following receipt of this declaration, after the appointment has been made, the court may review whether the private evaluator or minor's counsel meets the qualifications. The judge did not state whether the court has ever reviewed the qualifications of a private evaluator or minor's counsel. Our review of court rules revealed that although evaluators and minor's counsel in private practice must submit declarations as the judge described, the court rules do not require private mediators to submit a declaration affirming their qualifications.

The Marin Family Court's Process for Evaluating the Performance of Private Evaluators or Minor's Counsel

The former Marin supervising family court judge stated that the family court assesses the performance of private evaluators by observing them while they testify in court and when they interact with parents and the judicial officer in mandatory settlement conferences; by reviewing the quality of their work product, which is usually a lengthy report submitted to the court at the conclusion of the evaluation process; and by hearing complaints made about the evaluators by parties in family court proceedings or reviewing complaints received in accordance with the family court's local rules. In addition, the former Marin supervising family court judge stated that the family court evaluates the performance of minor's counsel by observing their representation of the minor's interest in court proceedings and in mandatory settlement conferences; by reviewing the quality of documents they submit to the family court; and by presiding over motions and other complaints about the performance of minor's counsel, which are typically made by a parent, during family court hearings.

Sacramento County Superior Court

The Sacramento County Superior Court (Sacramento Superior Court) consists of 13 court departments, including the Family and Children department (Sacramento family court). In 2010 the Sacramento family court consisted of eight judges and commissioners with the same jurisdiction that all California

courts share in family law matters, as discussed earlier in the Background section of this report. The Sacramento family court has an FCS (Sacramento FCS), which performs child custody mediations and California Family Code Section 3111 evaluations (3111 evaluations). Chapter 1 discusses in more detail this code section and the evaluations conducted under it. As of January 2010 the Sacramento FCS staff consisted of 17 professionals who perform both mediations and 3111 evaluations; however, its primary service is mediations. According to a judge for the Sacramento Superior Court, more than 92,500 family law cases were filed with the family court during the four-year period under review. However, the judge stated that the family court does not capture data on the types of cases for which it is more likely to require court appointees, such as cases with contested child custody and visitation, because the family court can think of no reason, legal or otherwise, for the use of such data.

The Sacramento Family Court's Rationale for Making Court Appointments Involving Professionals in Private Practice

A Sacramento Superior Court judge stated that the family court's rationale for appointing private mediators, evaluators, and minor's counsel is based upon a judge's consideration of the particular and discrete facts of each individual case, including whether such an appointment is in the best interests of the child or children.

The Sacramento Family Court's Process for Identifying Professionals in Private Practice Who Qualify for Appointment

A Sacramento Superior Court judge stated that private mediators, evaluators, and minor's counsel can be appointed from the family court's expert panel lists. A minor's counsel panel is the only panel provided for by the court rules we reviewed. The Sacramento Superior Court has a local rule that requires minor's counsel to complete and submit an application for placement on the family court's list for the minor's counsel panel. The local rules specify the additional standards on the application and state that, if requested, minor's counsel must supply certain documents. Although the Sacramento family court maintains a minor's counsel panel, the superior court judge stated that according to the court rules, a family court may also appoint minor's counsel who are not on the panel list. The court rules that we reviewed indicate—as the judge noted—that the family court may, in special circumstances, appoint minor's counsel who are not on its panel.

The Sacramento Family Court's Process for Evaluating the Performance of Private Appointees

The superior court judge stated that the family court is able to assess the performance of private mediators, evaluators, and minor's counsel in a number of ways, such as by reviewing their written work submitted to the family court, their responsiveness to the family court and its directives, their oral reports to and testimony before the family court, and the form of complaints or motions submitted to or filed by the parties with the supervising judge or the appointing judge.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the Bureau of State Audits (bureau) to audit California's Family Court System with respect to the use of court appointees in child custody disputes. Specifically, the audit committee directed the bureau to review the Marin and Sacramento family courts and, for the most recent four-year period, to identify, assess, and evaluate the family courts' processes related to court appointees. The audit committee was interested in the frequency with which the family courts use court appointees; the courts' selection process for court appointees, including the types of cases that are more likely to have court appointees; the rationale for making appointments; and the types of appointees, such as mediators or evaluators, assigned to cases. The audit committee also directed the bureau to evaluate and assess for a sample of contested custody cases whether the Marin and Sacramento family courts adhered to the following established processes: (1) ensuring that court appointees meet training requirements; (2) setting court appointee fees and allocating and paying these fees; (3) allowing parties to object to court appointees, including requesting a replacement; (4) evaluating appointees' performance and disciplining them; and (5) receiving, investigating, and resolving complaints against court appointees.

For the purposes of our audit, we defined *court appointees* as mediators, evaluators, and minor's counsel who are in private practice or who are employed by the Marin or Sacramento superior courts. We also established the most recent four-year period as April 1, 2006, through March 31, 2010.

To identify requirements for and policies about each audit objective, we reviewed the relevant court rules and California Family Code sections. We also reviewed each superior court's local rules and policies and procedures in effect during the audit period.

To identify, assess, and evaluate the frequency of the Marin and Sacramento family courts' use of court appointees, we relied on various data systems. For purposes of our audit, we defined *court appointment* as the assignment of a mediator, evaluator, or minor's counsel by a court order and *frequency* as the number of court appointments related to custody and visitation, or contested custody and visitation cases. The U.S. Government Accountability Office, whose standards we are required statutorily to follow, requires us to assess the sufficiency and appropriateness of computer-processed data. We obtained data from the Marin Superior Court's Beacon case management database (Beacon database) so that we could identify custody and visitation cases, contested custody and visitation cases, cases opened after April 1, 2006, and cases that remained open as of March 31, 2010. The purpose of the Beacon database is to manage civil, family law, juvenile, probate, and small claims cases and to maintain filing and disposition data about these cases in accordance with direction provided by the AOC. Accordingly, the Beacon database does not record the court's use of private mediators or evaluators. Further, the methodology provided by Marin Superior Court to identify court-appointed minors' counsel did not yield any such cases for the period under review.

We assessed the reliability of the Beacon database for the purpose of identifying custody and visitation cases, contested custody and visitation cases, cases opened after April 1, 2006, and cases that remained open as of March 31, 2010, by conducting data-set verification procedures, performing electronic testing of key data elements, and performing accuracy and completeness testing on the data. We identified no issues when performing data-set verification procedures. Further, in our electronic testing of key data elements in the Beacon database, we found that the data contain logical information for those fields relevant to our analysis. For our accuracy testing, we randomly selected 29 records and traced key data elements to the source documentation in the court's case files. We identified errors in one of the key fields needed for our analysis. Specifically, we identified two errors in the data element for the case subtype. Because we relied on this field to determine if a case was a custody and visitation case or a contested custody and visitation case, we cannot be sure that we included all relevant cases in our analysis. We also performed completeness testing by haphazardly selecting 29 case files and verifying that the Beacon database contained these cases. We found no errors in our completeness testing. Because of the errors noted in our testing for accuracy, we determined that the Beacon database is not sufficiently reliable for purposes of identifying either custody and visitation cases or contested custody and visitation cases.

We also attempted to identify, assess, and evaluate the frequency of the Sacramento family court's use of court appointees by obtaining data from the Sacramento Superior Court's Sustain case management database (Sustain database). The purpose of the Sustain database is to generate calendars, minute orders, out cards, and statistics. However, the Sustain database does not record the court's use of private mediators or evaluators. The Sustain database does record the use of court-appointed minor's counsel, which we discuss below.

To identify, assess, and evaluate the Marin and Sacramento family courts' selection process for court appointees, we interviewed court officials and reviewed each court's local rules. Specifically, we sought perspective, in writing, from each court's supervising family law judge on the types of cases that are more likely to have court appointees, the family court's rationale for making appointments, and the types of appointees that the family court assigns to cases.

To evaluate and assess whether the Marin and Sacramento family courts adhered to established processes for ensuring that court appointees meet training requirements, we reviewed the requirements for each court appointee type and performed the following procedures:

- For FCS mediators, we obtained a list of all FCS mediators that the Marin and Sacramento superior courts employed on April 1, 2006, and those that the superior courts hired between April 1, 2006, and March 31, 2010. We reviewed each mediator's official personnel file, training records, and other relevant documents. However, our audit was limited because the Marin and Sacramento FCS, family courts, or superior courts could not provide us with all the necessary records.
- To identify custody and visitation cases opened after April 1, 2006, and to identify those cases that included court-appointed minor's counsel, we obtained the Sacramento Superior Court's Sustain database. We assessed the reliability of the Sustain database by conducting data-set verification procedures, performing electronic testing of key data elements, and performing accuracy and completeness testing on the data. We identified no issues when performing data-set verification procedures. In addition, in our electronic testing of key data elements in the Sustain database, we found that the data contain logical information in the key fields needed in our analysis. For our accuracy testing, we randomly selected 29 records and traced key data elements to the source documentation in the court's case files. For two of the 29 case files tested, we identified inaccurate entries in the data field that indicates

when a case was filed. We also tested an additional sample of 29 case files to test the accuracy of the key fields used to identify minor's counsel. The results of this testing identified no errors. Further, we performed completeness testing by haphazardly selecting 29 case files and verifying that the Sustain database contained these cases. We identified three court cases that were not recorded in the Sustain database. Based on our testing and analysis, we determined that the Sustain database is not sufficiently reliable to be used to identify custody and visitation cases, contested custody and visitation cases, and cases opened after April 1, 2006. In addition, the errors we noted in our completeness testing indicate that the Sustain database is of undetermined reliability in identifying those cases that had court-appointed minors' counsel. Because there was no other source for this information, we used this database to select our sample for Sacramento's minor's counsel.

We also obtained data from the Sacramento FCS's database (FCS database) to identify contested custody and visitation cases and those cases that remained open as of March 31, 2010, and to determine if the Sacramento family court ordered mediations or evaluations. We assessed the reliability of the FCS database by conducting data-set verification procedures, performing electronic testing of key data elements, and performing accuracy and completeness testing on the data. We identified no issues when performing data-set verification procedures. In addition, in our electronic testing of key data elements in the FCS database, we found that the data contain logical information in the key fields needed in our analysis. For our accuracy testing, we randomly selected 29 records and traced key data elements to the source documentation in the court's case files. We identified inaccurate entries in numerous data elements. Specifically, the accuracy testing identified five errors in the data element containing the case number, three errors in the field that identifies the type of court action, three errors in the child's birth-date data element, six errors in the field that identifies whether a mediation session was held, and three errors in the field that identifies the type of mediation session. We also performed completeness testing by haphazardly selecting 29 case files and verifying that the FCS database contained these cases. We found that the FCS database did not contain two of the 29 cases tested. Accordingly, based on our testing and analysis, we determined that the FCS database is not sufficiently reliable to be used to identify contested custody and visitation cases, to identify cases that remained open as of March 31, 2010, or to determine if the court ordered mediations or evaluations.

Because no other source for this information was available, using the Sacramento Superior Court's Sustain database and FCS database, we identified 92 cases in which an evaluation was

performed during the period covered by our audit. For a sample of 3111 evaluations, we identified the evaluators and reviewed their official personnel file, training records, and other relevant documents. In addition, we determined whether the FCS evaluators filed the necessary declarations of their qualifications. However, our audit was limited because the Sacramento FCS, the Sacramento family court, and the Sacramento Superior Court could not provide us with all the necessary records.

- To identify private mediators and evaluators appointed by the Marin family court, we attempted to use the Marin Superior Court's Beacon database. However, as previously discussed, the Beacon database was not designed to track private mediators and evaluators. Instead, we sought the Marin family court's perspective on the number of private mediators and evaluators it appointed during the period that we audited. The Marin family court provided information indicating that it appointed eight private evaluators and asserted it did not appoint any private mediators. For a sample of private evaluators appointed by the Marin family court, we determined whether the evaluators filed the necessary declarations of their qualifications and attached copies of training certificates to their completed evaluation reports. We also determined whether the Marin family court made its appointment orders on the standard form, as applicable, and included the required language.
- For the private mediators and evaluators appointed by the Sacramento family court, we obtained the lists of its approved mediator and evaluator panels. However, for the period under review, the family court was unable to provide us with a complete list of private mediator or evaluator panel members. Using each of the panel lists that the court had on file, we compiled a population and selected a sample of mediators and evaluators. We reviewed their applications and training records. In addition, we assessed whether they met additional standards required by the Sacramento Superior Court's 2009 local rules. However, our audit was limited because the family court could not provide all the necessary documents.
- For the minor's counsel appointed by the Marin family court, we attempted to identify those cases that included court-ordered minor's counsel. However, as previously discussed, the Marin Superior Court's Beacon database did not yield any such cases that took place during the audit period. Therefore, we sought the Marin family court's perspective on the number of minor's counsel it appointed during the four-year period that we reviewed. The family court provided information indicating that it appointed four minor's counsel during this time. For each minor's counsel, we reviewed the case to which the attorney was appointed to identify the necessary declaration of qualifications.

- Finally, for the minor's counsel appointed by the Sacramento family court, we used the Sacramento Superior Court's Sustain database and identified those cases that included court-appointed minor's counsel. We asked the superior court to identify those minor's counsel it paid during the period that we audited. We performed procedures to assess whether the superior court properly identified all minor's counsel it paid and identified payments to one minor's counsel the court did not identify. Therefore, we cannot be certain that our audit includes all of the minor's counsel that the superior court paid during the four-year period under review. For a sample of minor's counsel, we reviewed the case to which the attorney was appointed to identify the necessary declaration of qualifications. In addition, we determined whether the minor's counsel met the additional requirements that the Sacramento Superior Court imposes through its local rules.

To evaluate and assess whether the Sacramento superior and family courts adhered to established processes for setting court-appointee fees and allocating and paying the hourly rate, we interviewed Sacramento court officials to understand the superior court's process for setting the fees for the Sacramento FCS's 3111 evaluation services. We also relied on Sacramento Superior Court's evaluations billing database. Specifically, we used this data for the purpose of identifying the number and amount of evaluations billed, collected, and uncollected. In addition, we also determined the number of unique cases and the total amount uncollected as of March 31, 2010, and the total amount uncollected before April 1, 2006. We assessed the reliability of the evaluations billing database by conducting data-set verification procedures and performing electronic testing of key data elements. We identified no issues when performing data-set verification procedures. Further, in our electronic testing of key data elements, we found that the court's evaluations billing database contained one key data element that had significant errors. We were able to compensate for these errors, and we otherwise found the data to contain logical information. However, we were not able to perform accuracy and completeness testing because the Sacramento family court's accounting staff do not keep copies of the statements that are sent to the parties for 3111 evaluations. Therefore, we found the court's evaluations billing database to be of undetermined reliability for identifying the number of and amounts for evaluations billed, collected, and uncollected, as well as for determining the number of unique cases and the total amount uncollected as of March 31, 2010, and the total amount uncollected before April 1, 2006. Nevertheless, we used the information from this database as there was no other source available. Further, to ascertain whether the Sacramento family court made the appropriate allocation of costs between the parties, we also reviewed a sample of orders appointing Sacramento FCS evaluators.

To analyze minor's counsel fees, we interviewed officials from the Marin and Sacramento superior courts to understand their processes for setting the hourly rates they pay. We reviewed orders both family courts made appointing minor's counsel to determine whether the family courts made determinations about the payment of minor's counsel fees. Because the Marin Superior Court lacked a written policy and procedures, we interviewed court officials to understand the superior court's process for approving and paying minor's counsel invoices. Moreover, we selected a sample of invoices to determine whether the Marin Superior Court followed its practice as described to us. We also reviewed Sacramento Superior Court's written policy and procedures for paying minor's counsel, and we selected a sample of invoices to determine whether the Sacramento Superior Court followed its policy for approving and paying those invoices.

To evaluate and assess whether the Marin and Sacramento family courts adhered to established processes for allowing parties to object to court appointees as required by California Rule of Court 5.220(d)(1)(A)(iv), we reviewed each superior court's 2009 and 2010 local rules. In addition, to determine whether the courts have a process in place to address any potential conflicts of interest that their FCS staff may have, we interviewed court officials and reviewed existing conflict-of-interest policies. Further, we obtained an assertion from court officials about the frequency of potential conflicts of interest. At the Sacramento family court, we reviewed a sample of FCS mediation cases to determine whether the Sacramento FCS followed its conflict-of-interest policy. We did not perform comparable work at the Marin FCS because it does not keep a log of the mediation cases that have the potential to be affected by conflicts of interest.

To evaluate and assess whether the Marin and Sacramento FCS followed established processes for evaluating the performance of their mediators and evaluators, we reviewed the superior courts' personnel policies and procedures. By reviewing FCS mediators' or evaluators' official personnel files, we then determined whether each court's FCS followed established policies and procedures. We also interviewed court officials and ascertained the number of instances in which each superior court sought disciplinary actions against an FCS mediator or evaluator.

Finally, to evaluate and assess whether the Marin and Sacramento FCS and family courts followed established processes for receiving, investigating, and resolving complaints about their FCS staff and the private mediators and evaluators they appoint, we gained an understanding of their complaint processes, and we reviewed the superior courts' local rules. The FCS and family court for each county accept written and verbal complaints. However, the FCS

and family court in neither county logs the complaints they receive. As a result, we cannot be certain that our audit included all of the complaints that the Marin and Sacramento FCS and family courts received during the period that we reviewed. We selected a sample of complaints from each FCS's and family court's files and reviewed the complaints to determine whether the Marin and Sacramento FCS and family courts handled the complaints according to established processes.

Chapter 1

THE SUPERIOR AND FAMILY COURTS COULD NOT CONSISTENTLY DEMONSTRATE THAT THEIR FAMILY COURT SERVICES STAFF AND OTHER APPOINTEES POSSESS NECESSARY QUALIFICATIONS AND TRAINING

Chapter Summary

The Sacramento County Superior Court (Sacramento Superior Court) has a Family and Children department (Sacramento family court) with an Office of Family Court Services (FCS) that performs mandatory mediations. The FCS mediators also complete evaluations that the family court may order under California Family Code Section 3111. Depending on the function performed, FCS staff are subject to several minimum qualifications and training requirements. However, our audit showed that seven of the 20 FCS mediators appeared not to meet at least one of the minimum qualifications or training requirements for performing mediations. Moreover, the Sacramento FCS does not always ensure that its evaluators are qualified for their appointments. As a result, the family court cannot be certain that FCS staff who perform mediations and evaluations possess the necessary skills to guide the parties through mediations effectively, to assess the families' conditions properly, and to ensure that the outcomes are in the best interests of the children. Finally, the Sacramento Superior Court has an established employee appraisal policy intended to document employees' duties and to assist in employee development, yet since 2008, the FCS has not adhered to the policy.

At times the Sacramento family court appoints professionals in private practice to perform mediations or evaluations. However, the Sacramento family court lacks the applications and training records to demonstrate that these private mediators and evaluators are qualified. In addition, the court lacks many documents that the Sacramento Superior Court's 2009 local rules require the family court to keep on file. Moreover, because the Sacramento Superior Court changed its local rules for 2010, the family court no longer obtains critical information, such as references and signed statements asserting that its private evaluators have read the evaluation guidelines. The Sacramento family court may also appoint attorneys in private practice to act as minor's counsel. Although minor's counsel appointees must file a declaration stating that they meet the qualifications and training requirements, three of the five case files we reviewed did not contain minor's counsel's declarations. Thus, the Sacramento family court cannot ensure that these attorneys have the qualifications and training to represent minors in family court.

Like Sacramento Superior Court, the Marin County Superior Court (Marin Superior Court) has an FCS (Marin FCS). Unlike the Sacramento FCS, the Marin FCS—part of the Family Court department (Marin family court)—has its staff perform mediations only. Yet the Marin family court could not demonstrate to us that all seven of its FCS mediators met the minimum qualifications, initial training, and continuing education requirements to perform mediations. The Marin family court therefore cannot be certain that its FCS mediators are fully qualified and trained to perform mediations for family law matters. On the other hand, the Marin FCS manager did adhere to Marin Superior Court's established personnel plan and policies by completing necessary performance evaluations. The FCS thus assists its mediators in developing as employees and in understanding the requirements of their jobs. Our review also revealed that the Marin family court could not show that the private evaluators always provided to the court within 10 days of their appointments the evaluators' declarations of their qualifications. Finally, not all of the minor's counsel that the Marin family court appointed during the four-year period under review filed the required declarations of their qualifications in a timely manner. The declarations by minor's counsel are key to assuring the court that the appointed attorneys are qualified to represent the interests of children. As a result, the Marin family court cannot be certain that the private evaluators and minor's counsel it appoints are qualified to provide evaluations and legal services.

The Sacramento FCS Could Not Demonstrate That Its Staff Possess the Necessary Qualifications or Training to Perform Mediations and Evaluations

California (State) law requires family courts to provide mediation services, performed by qualified individuals, free of charge to parties involved in family law cases in which issues of custody or visitation are in dispute. The staff for the Sacramento FCS perform both mediations and certain evaluations. However, for the period under review, the Sacramento FCS lacked some information to demonstrate that its staff met the minimum qualifications and training requirements. According to information that the FCS provided to us, seven of the 20 mediators on its staff appeared not to meet at least one of the minimum qualifications or training requirements to perform mediations. Moreover, we found that the FCS did not consistently ensure that its evaluators are qualified. Finally, although the superior court has an established employee appraisal policy, the Sacramento FCS did not appraise all staff in accordance with the policy. Consequently, the Sacramento family court cannot be certain that the FCS staff possess the necessary skills to perform mediations and evaluations in family law matters.

Seven of the 20 mediators on staff at the Sacramento FCS appeared not to meet at least one of the minimum qualifications or training requirements to perform mediations.

The Sacramento FCS Did Not Show That All of Its Staff Met the Minimum Qualifications or Training Requirements to Perform Mediations

We identified 20 FCS mediators who were employed by the Sacramento Superior Court on April 1, 2006, or who were hired between April 1, 2006, and March 31, 2010.³ FCS mediators hired before April 1, 2006, and employed as of March 31, 2010, had been performing mediations for, on average, 11 years. As the text box shows, state law establishes minimum qualifications that an FCS mediator must generally possess.

The Sacramento FCS could not demonstrate that four of the 20 mediators on its staff met all of the minimum qualifications. One of these mediators appeared not to have possessed at the time of hire the required two years' experience in counseling, psychotherapy, or both. The director of operations of the Sacramento family court stated that it was possible that the former hiring manager substituted the mediator's education for counseling experience, as permitted by state law, when determining the mediator's qualifications. State law allows the family court to substitute additional education for experience, or additional experience for the educational requirements, when hiring mediators. However, it seems imprudent of the Sacramento family court not to retain documentation in the mediator's official personnel file showing the court's decision to substitute education for experience. As a result, the Sacramento FCS cannot demonstrate that the mediator meets the minimum qualifications.

For three other mediators, the Sacramento FCS was missing documents related to their minimum qualifications. Specifically, the Sacramento FCS could not demonstrate that one mediator completed the Sacramento Superior Court's Basic In-Service Training program, which provides new employees with required knowledge of the California court system and family law procedures. The training program did not appear on the mediator's training record, and the manager of the Sacramento FCS stated that the mediator was unable to find her certificate of completion. Further, the employment applications and resumés for two other mediators were missing from their official personnel files. As a result, the Sacramento FCS could not demonstrate that the mediators met the minimum qualifications to perform mediations in family law matters. According to the superior court's director of

Minimum Qualifications for Family Court Services' Mediators

- At the time of hire, possession of a master's degree in psychology; social work; marriage, family and child counseling; or other behavioral science substantially related to marriage and family interpersonal relationships.
- At the time of hire, at least two years of experience in counseling or psychotherapy, or both.
- Knowledge of such areas as the court system of California, family law, resources in the community, adult psychopathology, and the psychology of families and children.

Source: The California Family Code Section 1815.

³ The Sacramento Superior Court's local rules refer to the FCS staff as *FCS mediators/investigators*. In this section, we refer to the FCS staff by their function. Specifically, we refer to these staff as *FCS mediators*.

human resources, it is the court's practice to keep the applications and resumés that individuals submit during the hiring process in their personnel files. The Sacramento Superior Court's record retention policy requires that these official personnel files be kept for a minimum of five years from the employee's final date of separation. As of January 1, 2011, these two FCS mediators were still employees. The director of human resources could not explain why the applications and resumés were missing.

Training Requirements for Family Court Services' Mediators

Initial training:

- 40 hours of custody and visitation mediation training approved by the Administrative Office of the Courts (AOC).*
- 16 hours of AOC-approved domestic violence training.

Annual continuing education:

- Eight hours of AOC-approved continuing mediation education.
- Four hours of AOC-approved domestic violence update training.
- Participation in performance supervision and peer review.
- 24 hours of AOC-approved additional training (supervisors only).

Sources: California Rules of Court 5.210, 5.215, 5.230, and the California Family Code Section 1816.

* State law gives the AOC responsibility for approving training courses to ensure that the courses' content fulfills the requirements outlined in the court rules.

In addition, the Sacramento FCS could not provide documents to demonstrate that most of its mediators had completed the necessary training. The text box shows the training requirements an FCS mediator must fulfill, under state law and the California Rules of Court (court rules). As of January 1, 2007, the court rules require each court to be responsible for tracking participation in education and the completion of minimum education requirements for its managers, supervisors, and other personnel. The rules do not specify the retention period for these records.⁴ The *Record Retention Policy* of the Judicial Council of California (Judicial Council) indicates that, in the absence of a specified retention period, three years is a reasonable period, but we believe that retaining these records for at least as long as an FCS mediator is a court employee would be reasonable. However, many of the Sacramento FCS staff were hired before April 1, 2006, the start of our audit period, and thus most of the records we needed were more than three years old.

We found that the Sacramento FCS could not demonstrate that one recently hired mediator had completed the initial 40-hour custody and visitation mediation training. According to the FCS manager, he did not require the mediator to complete this training because she worked as a mediator for another court before working for the Sacramento FCS, and he believed the mediator had received initial training at that court. Specifically, the FCS manager believed that the mediator's attendance at the 2005 Institute for New Court Professionals fulfilled the initial 40-hour requirement. However, our review of the agenda for this training found that, although it was a 40-hour training course, fewer than half of the hours were specific

⁴ California Rules of Court 10.474 also states that each manager, supervisor, and employee must keep records of his or her own participation for two years after each course or activity that is applied toward the requirements. Determining whether individual managers, supervisors, and employees were maintaining their own records for the required period of time was beyond the scope of our audit.

to custody and visitation training for mediators. It seems prudent for the Sacramento FCS to obtain documentation to verify that any potential employees who have experience at another court meet the initial training requirements. Without this documentation, the Sacramento FCS cannot ensure that its mediators are qualified to perform mediations.

FCS mediators must also refresh their training on mediation and domestic violence issues annually. However, we found that two mediators did not complete the required eight-hour continuing mediation education for 2009. Both FCS mediators took an extended leave during 2009. The FCS manager stated that he did not require them to complete this training upon their return because there were not enough available training courses approved by the Administrative Office of the Courts (AOC). However, the FCS manager was not precluded from seeking the AOC's approval for these employees to attend courses that were not on its approved training list. Moreover, the court rules we reviewed do not excuse mediators who take leave from fulfilling the training requirements upon their return. Because of this gap in training, the Sacramento FCS cannot be certain that its mediators possess all the skills necessary to perform mediations.

The Sacramento FCS Does Not Always Ensure That Its Evaluators Are Qualified

An FCS evaluator must meet minimum qualifications and training requirements to perform California Family Code Section 3111 evaluations (3111 evaluations).⁵ The text box describes this type of evaluation. For the four-year period of April 1, 2006, through March 31, 2010, using the Sacramento Superior Court's Sustain case management database (Sustain database) and the Sacramento FCS's database, we identified 92 cases in which an evaluation was performed.⁶ We selected nine of the 92 cases and reviewed the minimum qualifications and training records for the FCS evaluators appointed to these cases. The text box on the following page presents the minimum qualifications and training requirements for performing 3111 evaluations.

Evaluations Under the California Family Code Section 3111

A 3111 evaluation considers the health, safety, welfare, and best interest of the child. In performing a 3111 evaluation, the FCS evaluator may interview the parents, children, other parties, mental health professionals, and other individuals who may have information about the situation. The FCS evaluator, using his or her judgment, prepares a report that includes recommendations regarding a parenting plan.

Source: Policy information from the Sacramento family court.

⁵ The Sacramento Superior Court's local rules refer to its FCS staff as *FCS mediators/investigators*. In this section, we refer to the FCS staff by their functions. Specifically, we refer to these staff as *FCS evaluators*.

⁶ Please refer to the Scope and Methodology section of this report for the Bureau of State Audits' data reliability assessment of these databases.

Minimum Qualifications and Training Requirements for Evaluators Performing California Family Code Section 3111 Evaluations

Minimum qualifications consist of either of these alternatives:

- A California license as a psychologist, a marriage and family therapist, a clinical social worker, or a physician and board-certified psychiatrist or a physician who has completed residency in psychiatry.
- Certification by the court as meeting all the qualifications for court-connected evaluators.

Initial training encompasses the following:

- Completion of 40 hours of education and training courses, approved by the Administrative Office of the Courts, before appointment.
- Completion of 16 hours of advanced domestic violence instruction, including four hours of community resource networking.

Annual update training involves these components:

- Eight hours of annual update training in subject areas specified by the California Rules of Court.
- Four hours of annual domestic violence update training.

Sources: California Rules of Court 5.225 and 5.230, and the California Family Code sections 1816 and 3110.5.

Note: State law and court rules permit the court to appoint unlicensed evaluators in limited circumstances that we did not encounter.

Each year all FCS evaluators must, by January 30, submit to the Sacramento family court a declaration stating their qualifications, and the family court must sign it. The declaration outlines the FCS evaluators' compliance with the licensing, education, training, and experience requirements for that year. By signing the declaration, the family court is certifying that the evaluators are qualified to perform 3111 evaluations. For seven of the nine cases we reviewed, we found that the family court did not sign the FCS evaluators' declarations. According to the FCS manager, he overlooked the need to submit the declarations to the family court for signature.

In addition, state law requires the family court to certify that those evaluators who do not have a license are qualified to perform evaluations. However, for one case we reviewed, the FCS evaluator, who does not have a license, did not complete a declaration for the court's certification in 2009 because she was on leave for part of the year. The FCS manager stated that he did not ask the evaluator to complete the declaration because she returned to work after the January 30 deadline. Without the evaluators' completion of the declarations and the family court's signature, the court lacks assurance that these evaluators are qualified to perform 3111 evaluations, and this situation could undermine the public's trust in the evaluation reports upon which the court bases decisions that affect families.

The Sacramento FCS also could not demonstrate that any of the FCS evaluators who worked on the nine cases we reviewed met the initial training requirements. Specifically, the FCS could not demonstrate that one of its evaluators adhered to the court rules for completing the 40-hour initial training. This training includes topics such as the psychological and developmental needs of children, family dynamics, and the effects of separation and divorce on children. The court rules allow an FCS evaluator to complete at least 20 of the 40 hours of initial training before appointment and the remaining hours within 12 months of conducting his or her first evaluation. According to the family court's director of operations, the evaluator was appointed to her first evaluation on June 14, 2006. However, our review of the evaluator's certificates of completion found that she had only 14 hours before her first appointment,

instead of the 20 hours the court rules require. Therefore, the evaluator appears not to have met the requirements for completing the 40-hour initial training.

We could not determine whether the FCS evaluators who worked on the remaining eight cases met the initial training requirements because their hire dates ranged between 1987 and 2004. The manager for the Sacramento FCS made available to us a few documents from 2002 through 2004 but could not provide us with training records for the earlier years. As mentioned previously, as of January 1, 2007, the court rules require each court to be responsible for tracking participation in education and completion of minimum education requirements for its managers, supervisors, and other personnel. Although the rules do not specify a retention period for these records, we believe that retaining the records for at least as long as an FCS evaluator is a court employee would be reasonable.

We were able to ascertain that most of the FCS evaluators who worked on the nine cases we reviewed completed the eight-hour annual continuing education training in 2009. However, we found that the evaluator for two cases did not complete the required training because, as noted earlier, she was on leave. As in the case of her mediation training, this individual did not complete her evaluator training upon her return to the Sacramento FCS. Until the Sacramento FCS ensures that all its evaluators have met the initial and continuing education requirements, it cannot be certain that the parties are receiving evaluations, including recommendations affecting their families, from qualified FCS evaluators.

Further, one evaluator failed to satisfy a requirement that she demonstrate experience in conducting 3111 evaluations. The declaration that the evaluators are required to complete each year includes a section asking them to demonstrate that they have satisfied the experience requirement established in the state laws and court rules. This requirement called for evaluators to complete at least three partial or full 3111 evaluation reports between January 1, 2000, and July 1, 2003, or to conduct six 3111 evaluations before December 31, 2009, in consultation with another professional who has met the experience requirement. The same evaluator, who worked on two of the nine cases discussed in the previous paragraph, also did not demonstrate to the court that she satisfied this requirement. Specifically, the evaluator did not complete the experience section of her declaration for 2008 and, as previously discussed, did not submit a declaration for the court's certification in 2009 because she was on leave for part of the year.

One Sacramento FCS evaluator who worked on two cases did not complete the required annual continuing education training or satisfy a requirement that she demonstrate experience in conducting 3111 evaluations.

None of the nine Sacramento FCS evaluation reports we reviewed had a copy of the evaluator's certificates of completion for the required initial advanced domestic violence training and most recent four-hour update training.

Finally, the evaluation reports for the nine cases we reviewed lacked the required domestic violence training certificates. The court rules require evaluators to complete 16 hours of initial advanced domestic violence training and four hours of annual update training. The court rules also require each local court to adopt rules establishing procedures by which the evaluators are to notify the local court that they have met the training requirements. In the absence of a local rule, the court rules require the FCS evaluators to attach copies of their certificates of completion for 12 of the 16 hours of initial advanced domestic violence training and their most recent four-hour update training to each evaluation report that they complete.

Because the Sacramento Superior Court has not adopted a local rule, we expected to find copies of the evaluators' training certificates attached to their evaluation reports. However, none of the nine FCS evaluation reports we reviewed had a copy of the evaluator's certificates of completion. According to the FCS manager, it has been the Sacramento FCS's practice since 1991 not to require the evaluators to attach their certificates to the evaluation reports. Without the attached certificates, the Sacramento family court cannot be certain that an FCS evaluator is fully trained to handle domestic violence issues that may arise during an evaluation.

Although the Sacramento Superior Court Has Established Policies for Evaluating Employee Performance, the Sacramento FCS Does Not Follow the Court's Policies

The Sacramento Superior Court has a policy titled Policies and Administrative Procedures—Probationary Period—that is specific to its new employees. The probationary period is used to evaluate each employee's performance and to determine his or her capability and suitability for the position. New employees who are not covered by a labor agreement are subject to a one-year probationary period beginning on the date of hire, and the policy requires the employee's supervisor to prepare two interim reports and one final report during that year. We found that three of the 20 FCS mediators/evaluators were on probation during our audit period and that the FCS manager completed the necessary reports for two of them. In doing so, the FCS manager was able to make decisions about their capability and suitability for the FCS mediator/evaluator position. For the third FCS mediator/evaluator, the FCS manager completed only one of the two required interim reports and the final report because the employee had previously worked for the Sacramento family court, and the manager was unsure of the need for a new probationary period requiring the three reports. However, according to the superior court's director of human resources, the

court does not have a reinstatement policy and former employees are treated as new hires if they return. Therefore, the mediator was subject to the court's probationary policy.

For its nonprobationary staff, the Sacramento Superior Court has a policy titled Policies and Administrative Procedures—Performance Planning and Evaluation Individual Development Plans (employee appraisal policy)—that requires employees covered by the policy to receive an individual development plan (IDP) and a performance evaluation by their supervisors each year on the anniversaries of their hiring dates. The policy further requires the supervisors and managers to prepare and update duty statements for each court position. Specifically, the employee appraisal policy states that the purpose of the duty statement is to document the duties and responsibilities of each court position and to communicate that information to the employees. However, the policy does not specify how often updates should occur.

We identified 20 mediators/evaluators who were employed by the Sacramento Superior Court on April 1, 2006, or hired between April 1, 2006, and March 31, 2010. In 2006 the manager for the Sacramento FCS did not provide eight mediators/evaluators with IDPs or performance evaluations. Similarly, in 2007, the FCS manager did not provide 13 mediators/evaluators with IDPs or performance evaluations. After 2007 the FCS manager did not provide any of the mediators/evaluators with an IDP or performance evaluation. The FCS manager also did not receive IDPs or evaluations from his immediate supervisor in 2006 through 2009. Furthermore, the FCS manager did not provide two mediators/evaluators with duty statements, as the employee appraisal policy requires. Specifically, one employee who was rehired by FCS was not given a new duty statement. Because roughly 16 months had passed between the employee's initial termination date and the date she was rehired, and because the duties for the position may have changed, we would expect the FCS manager to have provided the mediator/evaluator a new duty statement. The other employee was not given a duty statement upon being hired. However, when we brought this to the FCS manager's attention, he prepared one and submitted it to the superior court's human resources department.

According to the Sacramento Superior Court's executive officer, the employee appraisal policy is still in effect, but the court is not enforcing it. Specifically, the executive officer stated that the policy does not mandate the completion of performance evaluations and IDPs, but instead states that employees covered by the policy should normally be provided an IDP and a performance evaluation each year. The executive officer believes the use of the word "should" expresses a preference or a nonbinding recommendation.

An employee appraisal policy is in effect, but the Sacramento Superior Court is not enforcing it. The FCS manager has not provided any of the mediators/evaluators with a performance evaluation since 2007.

The executive officer stated that the intent of the employee appraisal policy is to assist in the employee's development and achievement of career goals, a purpose that is less important to the FCS mediators/evaluators because they are licensed professionals who are well established in their careers. The executive officer also stated that the court ensures that FCS mediators/evaluators continue to develop their skills, that the FCS uses a well-established process to verify that the education and training requirements are met, and that the Sacramento Superior Court uses a well-established progressive discipline process to address employee performance deficiencies. For these reasons, the executive officer does not believe it is necessary to mandate that the Sacramento FCS complete the IDPs and evaluations for its staff or that the FCS establish a separate policy for performance appraisal.

The Sacramento Superior Court's employee appraisal policy states that a performance evaluation system is essential for linking individual employee performance and development to the success of the court. Although the court's executive officer correctly characterizes the definition of "should" per the court rules, a full reading of the court's employee appraisal policy provides further context. Specifically, the employee appraisal policy clearly delineates those court employees who are not subject to the policy, such as employees who work part-time or serve in a limited-term appointment for one year or less. In addition, the policy clearly states that the IDPs and evaluations for employees who serve in a limited-term appointment for more than one year or who work on a special project that is expected to extend beyond one year will be prepared by the supervisor 30 days after the appointment or special assignment ends instead of annually. Further, as we discussed previously, we found that the Sacramento FCS could not demonstrate that its staff who perform mediations and evaluations have the qualifications and training for these jobs. Thus, contrary to the belief of the Sacramento Superior Court's executive officer, the FCS is not using a well-established process to verify that the education and training requirements are met.

Moreover, although the executive officer stated that the court uses a well-established progressive discipline process to address performance deficiencies, according to the employee discipline policy described in the next paragraph, the court would not initiate disciplinary procedures unless the employee engages in misconduct or has unsatisfactory job performance in the judgment of the responsible supervisors. If the Sacramento Superior Court does not conduct annual performance evaluations for its FCS employees, it is less likely to identify and address performance deficiencies.

If the Sacramento Superior Court does not conduct annual performance evaluations for its FCS employees, it is less likely to identify and address performance deficiencies.

The Sacramento Superior Court has a policy titled Policies and Administrative Procedures—Discipline and Employment Protection. Under this policy, the court may initiate disciplinary procedures when an employee engages in misconduct or when the employee's job performance is unsatisfactory in the judgment of the responsible supervisors. Examples of misconduct or performance deficiencies include insubordination, discriminatory or discourteous behavior, and falsification of an entry on a court document such as a time card or expense report. The policy states that disciplinary actions will normally be progressive, including one or more warnings before discipline is imposed. The procedure for major discipline resulting in suspension, reduction in pay, demotion, or dismissal requires a manager in the employee's supervisory chain to issue a written notice of proposed discipline, which must include the reasons for proposing discipline, the proposed penalty, and the opportunity to reply. The Sacramento Superior Court's director of human resources asserted that the court took no formal discipline against an FCS mediator/evaluator during the four-year period that we audited.

The Sacramento Superior Court asserts it took no formal discipline against an FCS mediator/evaluator during the four-year period we audited.

The Sacramento Family Court Could Not Demonstrate That Its Appointed Professionals or the Private Mediators, Evaluators, and Minor's Counsel on Its Panel Met Certain Requirements

Although the Sacramento FCS has employees who perform mediations and evaluations in contested custody and visitation cases, at times the family court also appoints professionals in private practice to perform these services. The Sacramento family court keeps lists—referred to as *panels*—of professionals it has deemed qualified to provide these services and has asserted that it makes private mediator and evaluator appointments primarily from these panels.⁷ However, the family court lacks the applications and training records to demonstrate that its private mediators and evaluators have the necessary qualifications for appointment. In addition, the family court lacked many documents the Sacramento Superior Court's 2009 local rules require it to keep on file. Moreover, minor's counsel must file with the family court a declaration stating that they meet the court rule's minimum qualifications and training requirements. However, of the five cases we reviewed, three did not contain declarations from the appointed minor's counsel.

⁷ The Sacramento family court's evaluator panel is specifically for evaluators it appoints according to California Evidence Code, Section 730 (Evidence Code 730). According to state law, if the court or any party to a case requires expert evidence, the court may appoint one or more experts to investigate, to render a report, and to testify as an expert on the matter. In the Sacramento family court, an evaluation by an expert appointed under Evidence Code 730 is similar to a 3111 evaluation, although the Sacramento Superior Court's local rules state that psychometric or psychological testing requires a forensic psychologist.

The Sacramento Family Court Cannot Show That It Appoints Qualified Private Mediators and Evaluators

The Sacramento Superior Court's Sustain database was designed to generate calendars, minute orders, out cards, and statistics. However, the database does not record the court's use of private mediators or evaluators. Therefore, the Sacramento Superior Court was unable to furnish us with data that would allow us to identify the private mediators and private evaluators the family court has appointed to contested custody and visitation cases and to determine how often the family court has made this type of appointment. Seeking an alternative to the data, we obtained the family court's panel lists that include the names of the professionals it has determined are qualified to perform mediations and evaluations. However, the family court's director of operations informed us that its practice until 2010 was to keep one electronic version of each panel list, which it would update by adding and deleting names and contact information rather than creating a new list each time changes were made to the panels. Therefore, the family court was not able to provide us with a complete list of private mediators or evaluators for our audit period of April 1, 2006, through March 31, 2010. From the panel lists the court had on file, we identified 28 private mediators and 13 evaluators. We selected nine mediators and five evaluators to determine whether they met the minimum qualifications and training requirements stated in the court rules and state law. Table 1 lists these requirements.

The Sacramento family court requires prospective private mediator and evaluator panel members to submit an initial application and indicate on the application whether they have met the minimum qualifications and training requirements. In addition, the court requires applicants to include verification of their training. Thus, we expected to find the private mediators' and evaluators' initial applications and copies of their training records. However, the Sacramento family court was unable to provide the initial applications for six of the nine private mediators we reviewed. For the remaining three mediators, although the court had their initial applications, it did not have copies of the training records for two of them. The lack of documentation is troublesome because, during the four-year period that we audited, four of the nine private mediators performed mediations for 22 contested child custody and visitation cases on behalf of the FCS because it had more cases to mediate than its resources allowed or had identified a potential conflict of interest. Thus, particularly in these instances, it seems prudent that the FCS be able to demonstrate that the private mediators have met the training requirements.

Table 1
Requirements for Private Mediators and Evaluators Appointed by Family Courts

	APPLIES TO A MEDIATOR	APPLIES TO AN EVALUATOR
Minimum Qualifications		
A master's degree in psychology; social work; marriage, family, and child counseling; or other behavioral science substantially related to marriage and family interpersonal relationships.	●	
A license as a psychologist, marriage and family therapist, or clinical social worker, or a physician who is either a board certified psychiatrist or has completed a residency in psychiatry.*		●
At least two years of experience in counseling or psychotherapy, or both.	●	
Knowledge of the California court system and the procedures used in family law cases.	●	
Knowledge of other resources in the community to which clients can be referred for assistance.	●	
Knowledge of adult psychopathology and the psychology of families.	●	
Knowledge of child development, child abuse, clinical issues relating to children, the effects of divorce on children, the effects of domestic violence on children, and child custody research sufficient to enable a counselor to assess the mental health needs of children.	●	
Completion of three partial or full court appointed child custody evaluations, including a written or oral report, between January 1, 2000, and July 1, 2003, or completion of six child custody evaluations in consultation with another professional who meets the experience requirements.†		●
Training Requirements		
Complete 40 hours of education and training approved by the Administrative Office of the Courts (AOC).	●	●
Complete eight hours of AOC approved annual training to update the 40 hour training required.	●	●
Complete AOC approved basic domestic violence training.	●	●
Complete 12 hours of AOC approved advanced domestic violence training.	●	●
Complete four hours of AOC approved domestic violence community resource networking.	●	●
Complete four hours of AOC approved annual domestic violence update training.	●	●

Sources: California Rules of Court (court rules) 5.210, 5.225, and 5.230, and the California Family Code sections 1815 and 1816.

Note: State law and court rules permit the court to appoint unlicensed evaluators in limited circumstances that we did not encounter.

* An unlicensed individual may be appointed as an evaluator if the court certifies that the individual has met the qualifications for a court connected evaluator. Court rule 5.225(b)(7) defines a *court-connected evaluator* as a superior court employee or person under contract to a superior court who conducts child custody evaluations.

† Effective January 1, 2010, to comply with the experience requirement, an evaluator must have participated in the preceding three years in the completion of at least four partial or full court appointed evaluations that resulted in written or oral reports.

Further, the Sacramento family court was unable to provide us with the initial applications for four of the five private evaluators we reviewed. According to the family court's director of operations, the missing applications and training records were purged before July 2006 by the prior management. Our legal counsel advised us that there is no requirement in state law that the family court retain private mediators' and evaluators' panel applications or training records.

The Sacramento family court was able to provide the initial application and training records for the fifth private evaluator. We found that the evaluator did not meet all of the training requirements. Specifically, the evaluator's application did not include evidence of his completion of the basic domestic violence training or four hours of advanced domestic violence training related to community

The Sacramento family court did not require the private mediators to provide copies of their training certificates with their renewal applications and thus, we could not determine whether the nine private mediators in our sample had completed the annual update training required.

resource networking. The family court director of operations stated that the court's practice is to rely on the evaluator's licensure to satisfy the domestic violence requirements. The director stated that the evaluator completed the basic domestic violence training and four hours of advanced domestic violence training as a part of his licensure as a psychologist. However, the court did not verify whether or not the domestic violence training the evaluator took was approved by the AOC. Thus, the court's practice cannot ensure the evaluator has met the training requirements for private evaluators.

In August 2009 the Sacramento family court requested that its private mediator and evaluator panel members submit a renewal application, including information about their continuing education. However, the family court did not require the private mediators to provide copies of their training records. The Sacramento family court's lack of such documentation prevented us from determining whether the nine private mediators in our sample had completed the annual update training that the court rules require. The family court did require the private evaluators to provide copies of their training certificates with their renewal applications. Two of the five private evaluators in our sample did not complete renewal applications because one evaluator was added to the panel in July 2009, just a month before the renewal applications were requested, and the other was removed from the panel in September 2009. The family court provided the renewal applications for the remaining three private evaluators.

Even though all three evaluators reported that they had met the annual update training shown in Table 1 on the previous page, our review found that two of the evaluators had not met the requirements. Specifically, one evaluator took annual update training that was not AOC-approved, and he did not seek the AOC's approval to attend the training. The director of operations for the Sacramento family court stated the court was under the impression that when training certificates indicate that the requirements under court rules 5.225 and 5.230 have been met, the training sponsors have satisfied the AOC program approval requirements. However, our review of this evaluator's training certificates found no statement indicating that the court rule requirements were met. Further, the AOC confirmed that it did not approve the training and that the evaluator did not seek its approval to attend the training.

The second evaluator completed only two of the four hours of domestic violence update training the court rules require. The director of operations for the Sacramento family court stated that the court's training records for this evaluator were incomplete. The director of operations also stated that, as of September 2010, the court no longer uses a renewal application process for private mediators and evaluators. Instead, beginning March 2, 2011, the court will require private mediators and evaluators to file declarations that

they meet the qualifications before it appoints them to each case. The court's decision to require the private evaluators to complete declarations is consistent with the court rules, which require private evaluators to complete a declaration and file it with the court no later than 10 days after each appointment and before they begin any work on each evaluation. The court rules do not require private mediators to file a declaration. However, the director of operations stated that the Sacramento family court will use its appointment orders to order the private mediators to follow the same process as the private evaluators.

The Sacramento Superior Court's 2009 local rules required the Sacramento family court to maintain certain documents related to its private mediators and evaluators. However, the Sacramento family court did not maintain at least one required document for each of the nine mediators and four of the five evaluators we reviewed. As Table 2 shows the family court failed to obtain the mediators' and evaluators' written assurance that they had read the Sacramento family court's applicable procedure manual or guidelines and did not always collect the necessary references.

Table 2
Records on File for the Sacramento Family Court's Private Mediators and Evaluators

	CURRICULUM VITAE [‡]	MINIMUM OF THREE REFERENCES	STATEMENT THAT THE APPROPRIATE PROCEDURE MANUAL OR GUIDELINE WAS READ	LICENSE AND LICENSE NUMBER
Mediator A				†
Mediator B	†	†		†
Mediator C		†		†
Mediator D	†			†
Mediator E		†		
Mediator F				†
Mediator G	†	†		†
Mediator H				†
Mediator I				†
Evaluator A	†			
Evaluator B				†
Evaluator C	*	*	*	*
Evaluator D				†
Evaluator E	†			†

Sources: The Sacramento County Superior Court Local Rules 14.08.01 and 14.08.05, dated January 1, 2009, as well as the Sacramento family court's private mediator and evaluator panel files.

* Evaluator C was removed from the panel in 2009, and the family court did not retain those records.

† The Sacramento family court had the document on file in accordance with the Sacramento Superior Court's local rules.

‡ A curriculum vitae provides a short account of one's career and qualifications.

Although the Sacramento Superior Court's 2009 local rules required the court to maintain the documents shown in Table 2 on the previous page, the family court director of operations stated that the court's practice was not to require applicants to provide the references. The director of operations also stated her belief that the applicants fulfilled the documentation requirement by indicating on their applications that they would comply with the direction to "review and provide a signed agreement to abide by the terms and provisions contained in the Sacramento County Private Mediation Procedure Manual"—or, for evaluators, the terms and provisions "contained in the Sacramento County Evaluator Procedural Guidelines." However, as stated in the application, the applicants must provide actual signed agreements that they have read the materials.

In 2010 the Sacramento Superior Court modified its local rules to require the family court to maintain only the curriculum vitae and license number for each private mediator and private evaluator. In addition, the 2010 local rules were modified to require the family court to maintain only statements from the private mediators that they have read the Sacramento County Private Mediation Procedure Manual and the private mediators' license. Further, the 2010 local rules no longer require applicants to provide references. A Sacramento Superior Court judge stated that the 2009 local rules were modified or omitted after full consideration by the family law judges because in their judgment either the rule was unnecessary or a change to the rule was needed. The superior court judge also stated that the court did not receive from the public or representatives of the family law bar any comments or opposition to the modifications or omissions to the rules.

The removal of the requirement to provide references can potentially make it difficult for the parties to identify private mediators and evaluators who are qualified to assist with resolving contested child custody and visitation issues. Further, because of the removal of the 2009 rule requiring private evaluators to provide a signed statement that they read the Sacramento County Evaluator Procedural Guidelines, the family court no longer has a method to gain assurance that the private evaluators are familiar with family law evaluation guidelines.

The Sacramento Family Court Does Not Ensure That It Receives Required Minor's Counsel Declarations

In situations where a family court judge believes that it would be in the best interest of the child, the judge may appoint a minor's counsel, or attorney who represents the child's interest in custody and visitation proceedings. According to the court rules, the family

court may create and maintain a list or panel of attorneys who meet the minimum qualifications to represent a child. The family court may then choose to appoint minor's counsel from the list or panel or, under special circumstances, may appoint counsel not on the panel. Using the Sacramento Superior Court's Sustain database, we identified 126 cases involving the appointment of minor's counsel during the four-year period under review.⁸ The Sacramento Superior Court's accounting manager determined that the superior court paid minor's counsel costs for 47 of the 126 cases. However, our review of five of the 79 cases identified as having minor's counsel costs paid by the parties identified one case in which a court payment was made. Therefore, we cannot be certain that our audit covered all of the minor's counsel paid by the superior court during the audit period.

Minor's counsel have only been required to meet specific education, training, and experience requirements related to their appointment as minor's counsel since January 1, 2008. The text box presents the legal requirements for appointment as minor's counsel that are reflected on the minor's counsel declaration. Before the adoption of court rule 5.242, requiring the use of a minor's counsel declaration, in January 2008, minor's counsel had to meet various general requirements, such as being a member of the California State Bar in good standing, but there were no education, training, and experience requirements for appointed minor's counsel that pertained specifically to serving as a minor's counsel in state law or in the court rules. The court rule requires minor's counsel to file a declaration with the court indicating their compliance with the requirements no later than 10 days after their appointment and before working on the case.

The family court's sole use of a declaration to determine the qualifications of minor's counsel does not provide us with the appropriate evidence under the audit standards we are required statutorily to follow to draw conclusions regarding whether or not minor's counsel have met the minimum qualifications and other requirements. Typically, we would rely on such evidence as the minor's counsel's insurance, training, and court records to substantiate

Minor's Counsel Qualifications and Education, Training, and Experience Requirements on the Declaration

The court rules require minor's counsel to file a declaration with the court indicating his or her compliance with the following requirements:

- Being an active member in good standing with the State Bar of California.
- Having professional liability insurance or demonstrating to the court that he or she is adequately self-insured.
- If appointed after January 2009, completing at least 12 hours of applicable education and training.
- Meeting the initial experience requirements by having represented a party or a child in at least six proceedings involving child custody within the preceding five years, or fulfilling all of the following criteria:
 - Meeting the alternative experience requirements by being employed by a legal services organization, a governmental agency, or a private law firm that has been approved by the presiding or supervising family court judge.
 - Being directly supervised by an attorney in an organization, an agency, or a private law firm that meets the initial experience requirements in the court rules.
 - Being an attorney working in consultation with an attorney approved by the presiding or supervising family court judge.
 - Demonstrating substantial equivalent experience as determined by local court rule or procedure.

Source: California Rule of Court 5.242.

⁸ For the Bureau of State Audits' data reliability assessment of this database, please refer to the Scope and Methodology section of this report.

Of the five cases in which the Sacramento court had paid minor's counsel costs that we reviewed, the minor's counsel appointed to three did not have the required declarations of their qualifications in the files related to their cases.

their qualifications. However, our legal counsel advised us that because the court rules require the use of a declaration, and because the submission of an untruthful declaration could constitute fraud on the court that could lead to the signing attorney's discipline, a declaration serves as a valid legal means for a family court to certify that the minor's counsel satisfies the minimum qualifications and other requirements.

We reviewed five of the 47 cases for which the Sacramento Superior Court's accounting manager determined that the court had paid minor's counsel costs. We found that minor's counsel were appointed to two cases before January 1, 2008, the effective date of the court rule requiring a minor's counsel declaration. The minor's counsel appointed to the other three cases did not have the required declarations in the files related to their cases. On October 27, 2010, a Sacramento Superior Court judge acknowledged that the required declarations were not in the case files. In addition, the judge stated that the court was developing a notice to its minor's counsel appointees instructing these attorneys to file their declarations. The judge also affirmed the court was developing an attachment to the appointment order to direct minor's counsel to complete and file the declaration. On November 8, 2010, the family court director of operations sent a notice to the private attorneys on the minor's counsel panel informing them of the requirement to complete the declaration. The director of operations for the Sacramento family court also gave us an example of an appointment order that instructs the minor's counsel to file the declaration no later than 10 days after his or her appointment and before beginning work on a case.

The court rules allow courts to develop local rules that impose additional experience requirements for the minor's counsel they appoint. The Sacramento Superior Court has had such a local rule since at least January 2007. For example, the local rule requires minor's counsel to provide the family court with an application that includes licensing, insurance, and training information and to make supporting documentation available to the court upon its request. In addition, the local rule requires the minor's counsel to participate with an attorney and/or private mediator mentor during the first three cases in which the minor's counsel provides representation. The family court was able to provide us with the applications for the minor's counsel appointed to three cases we reviewed, but there was no evidence to indicate that the court requested documentation supporting the information in their applications or that they met the other standards established by the local rule. Further, the family court was unable to provide applications for the minor's counsel appointed to the other two cases. According to the family court director of operations, the missing applications were purged before July 2006 by the

prior management. Our legal counsel advised us that there is no requirement in state law that the family court retain the panel applications or other supporting documentation. However, without this information, the family court cannot demonstrate that the minor's counsel it appoints have met its additional standards.

Although the Marin FCS Evaluates the Performance of Its Staff, It Could Not Demonstrate That They Possess the Necessary Qualifications and Training

The staff in the Marin FCS perform only child custody and visitation mediations. We found that the Marin FCS could not demonstrate to us that five of its seven mediators met the minimum qualifications necessary to perform mediations in family law matters. In addition, the Marin FCS could not demonstrate that four of the seven mediators we reviewed completed the initial 40-hour custody and visitation training or the initial 16-hour advanced domestic violence training. However, the former FCS manager completed the necessary performance evaluations and probationary reports in a timely manner. Moreover, the Marin Superior Court's executive officer asserted that the court did not seek disciplinary action against any FCS mediators or the former FCS manager during our audit period.

The Marin Family Court FCS Mediators Did Not Always Meet the Minimum Qualifications or Training Requirements

The staff in Marin's FCS perform only child custody and visitation mediations. The text box on page 25 summarizes the minimum qualifications for a mediator. We identified seven FCS mediators who were either employed by the Marin Superior Court on April 1, 2006, or who were hired between April 1, 2006, and March 31, 2010. The three FCS mediators who were hired before April 1, 2006, and were still employed as of March 31, 2010, have been performing mediations for, on average, seven years.

We found that the applications for four of the Marin FCS mediators did not indicate that the applicants had one of the minimum qualifications—knowledge of resources in the community to which clients can be referred for assistance. Similarly, the application for a fifth FCS mediator did not indicate that the mediator had knowledge of adult psychopathology and the psychology of families. The Marin Superior Court's human resources manager stated that the court does not have written procedures for staff to check that applicants have met each minimum qualification. The human resources manager described the court's process as examining instead the individual's FCS mediator application and

The superior court cannot demonstrate that five of the seven Marin FCS mediators we reviewed met the minimum qualifications.

supplemental questions to identify experience or education that implies that the applicant possesses the knowledge required by state law. During the interview phase, the interviewer asks questions and poses case studies to further determine whether the applicant possesses the required knowledge. However, the human resources manager was unable to provide documentation related to the interviews held with these FCS mediators. Thus, the superior court cannot demonstrate that these FCS mediators met the minimum qualifications.

In addition, the Marin FCS could not provide documents to demonstrate some of its mediators' completion of the initial training requirements. The text box on page 26 presents the training requirements for mediators. We found that for four of the seven mediators the FCS did not have documentation to show that these mediators had completed the initial 40-hour custody and visitation training or the initial 16-hour advanced domestic violence training. These four mediators were employed previously by other courts and were performing mediations before their employment at the Marin Superior Court. The human resources manager stated that it was the responsibility of the mediators' previous employers to ensure that they met the initial training requirements. Nevertheless, it seems prudent for the Marin Superior Court to obtain documentation from either the previous employing court or the potential employee to verify that any potential FCS employee who has previous experience at another court has met the initial training requirements. Without this documentation, the Marin Superior Court cannot ensure that the FCS mediators are qualified to perform mediations.

Finally, FCS mediators must refresh their training on mediation and domestic violence issues annually. In 2009 the three FCS mediators who were employed during the year and did not serve in a supervisory capacity met all their continuing education requirements. However, in that same year the former FCS manager completed only 14 of the 24 hours of additional training required for supervisors. The executive officer for the Marin Superior Court stated that the former FCS manager did not complete the training because he was set to retire at the end of the year.

The former FCS manager's last day of employment with the court was December 30, 2009. As of December 2010 the Marin Superior Court had not replaced the former FCS manager. Instead, because of funding limitations, the court assigned the administrative aspects of the former FCS manager's duties to its human resources manager. However, according to the executive officer, the human resources manager is not qualified to perform clinical supervision of the three FCS mediators. Consequently, since December 31, 2009, the three FCS mediators have not

met the training requirement of participating in performance supervision because they are no longer meeting with a supervisor who possesses the necessary experience every two weeks to discuss their individual cases.

The Marin FCS Follows the Superior Court's Established Employee Appraisal Policy

The Marin Superior Court's Personnel Plan and Policies states that the court will evaluate newly hired probationary employees at least once during their probationary period. In addition, the court's policy states that it will prepare formal performance evaluations annually for its nonprobationary employees. The purpose of the formal performance evaluations is to provide supervisors and employees the opportunity to discuss job tasks, encourage and recognize strengths, and identify and correct weaknesses.

The former Marin FCS manager completed the necessary annual performance evaluations and did so in a timely manner for five of the six FCS mediators who were employees of the Marin FCS during the four-year period that we audited. The former FCS manager also promptly completed the required probationary reports for one of the FCS mediators. However, because of her busy schedule, the Marin Superior Court's executive officer stated that she did not prepare a performance evaluation in 2006 for the former FCS manager. Nevertheless, by following the Marin Superior Court's Personnel Plan and Policies, the former FCS manager was able to assist the mediators in developing as employees and in understanding the requirements of their jobs.

The Marin Superior Court's Personnel Plan and Policies also includes a policy titled "Discipline and Discharge." According to the policy, the court may initiate disciplinary measures when an employee engages in misconduct or when job performance is unsatisfactory in the judgment of the responsible supervisors. Examples of misconduct or performance deficiencies include insubordination, unsatisfactory work quality, and falsification of an entry on a court document such as a time card or expense report. The policy states that before the court discharges the employee, disciplinary actions will usually follow a progressive discipline pattern, including one or more oral or written warnings, and/or suspension. The procedure for major discipline resulting in suspension without pay for more than five days, a demotion or reduction in pay, or discharge requires the court to give the employee a written notice of the proposed disciplinary action. The notice must include information such as the proposed action, the basis for the charge, and a statement informing the employee of the right to respond by a certain date. The Marin

Superior Court's executive officer stated that the court did not seek disciplinary action against any FCS mediators or the former FCS manager during the period that we audited.

The Marin Family Court Could Not Demonstrate That Its Private Evaluators and Minor's Counsel Met Certain Requirements

The Marin family court appoints professionals in private practice to perform evaluations and act as counsel for a minor. However, the court could not demonstrate that the private evaluators filed declarations of their qualifications with the court within the required time frame. In addition, the Marin family court did not ensure that the private evaluators attached their domestic violence training certificates to the evaluation reports. Further, the Marin family court did not always make its orders appointing evaluators using the standard, required form and on one order did not cite the state law allowing the court to make the appointment. Finally, not all of the minor's counsel the family court appointed during our audit period filed the required declarations of their qualifications promptly.

The Marin Family Court Did Not Ensure That Its Private Evaluators Were Qualified and Met Certain Training Requirements

The Marin Superior Court's Beacon case management database (Beacon database) was designed to manage civil, family law, juvenile, probate, and small claims cases and to maintain filing and disposition data about these cases. However, the Beacon database does not record the court's use of private mediators or evaluators. Therefore, the Marin Superior Court was unable to provide us with data that would allow us to identify the private mediators and private evaluators whom the family court has appointed to contested custody and visitation cases and to determine how often the family court has made these types of appointments. The former supervising judge for the Marin family court stated that the court did not appoint any private mediators but did appoint private evaluators to 13 cases between April 1, 2006, and March 31, 2010.⁹ From the judge's list of 13 cases, we selected five cases and reviewed the qualifications of the private evaluators. Table 1 on page 35 presents the requirements for court-appointed private evaluators.

⁹ The Marin Superior Court's local rules dated January 1, 2009, state that the family court will make evaluator appointments in accordance with Evidence Code 730. According to state law, if expert evidence is required by the court or by any party to a case, the court may appoint one or more experts to investigate, to render a report, and to testify as an expert on the matter.

The court rules require private evaluators to submit to the court a declaration indicating their compliance with all applicable education, training, and experience requirements. Specifically, the private evaluators must complete a declaration and file it with the court no later than 10 days after notification of each appointment and before they begin any work on each child custody evaluation. The Marin family court relies solely on the declaration to ensure that the private evaluators they appoint meet the education, training, and experience requirements. The court's sole use of a declaration to determine the qualifications of its private evaluators does not provide us with the appropriate evidence under the audit standards we are required statutorily to follow to draw conclusions as to whether or not the evaluators have met the requirements. Typically, we would rely on evidence such as the evaluators' training records to substantiate their qualifications. However, our legal counsel advised us that, because the court rules require the use of a declaration, it serves as a valid legal means for a court to certify that an evaluator satisfies the education, training, and experience requirements. We determined that, in each of the five cases we reviewed, the private evaluators failed to file their declarations with the family court within 10 days of appointment and before commencing any work on the evaluation. In fact, one evaluator filed her declaration almost 19 months after her appointment to the case. According to the Marin Superior Court's human resources manager, who responded on behalf of the family court, the family court obtained the declarations late due to an oversight.

The Marin family court also did not ensure that the private evaluators attached their domestic violence training certificates to the evaluation reports. The court rules require each court to adopt local rules regarding procedures for the evaluators to notify the court that they have met the training requirements. In the absence of a local rule, the court rules require the evaluators to attach copies of their certificates of completion for 12 of the 16 hours of initial advanced domestic violence training and for their most recent four-hour update training to each evaluation report they complete. We reviewed the Marin Superior Court's local rules, and we expected to find copies of the evaluators' training certificates attached to their evaluation reports because the court has not adopted a local rule that specifies otherwise. However, for three of the five cases, the private evaluators did not attach their domestic violence training certificates to their completed evaluation reports. For the remaining two cases, one evaluator did not submit a report due to the death of one of the parties and the other evaluator's report was not yet due. According to the Marin Superior Court's human resources manager, who responded on behalf of the family court, the family court believes the absence of domestic violence training certificates was an oversight on the part of the evaluators.

In each of the five cases we reviewed, the private evaluators failed to file declarations of their qualifications with the Marin family court within 10 days of appointment and before commencing any work on the evaluation as required.

Without receiving proof of domestic violence training and the evaluators' prompt submission of declarations of their qualifications, the Marin family court cannot be assured that it appoints qualified private evaluators.

Without receiving required proof of domestic violence training and the evaluators' prompt submission of declarations of their qualifications, the Marin family court cannot be assured that the private evaluators it appoints meet the legal requirements to perform evaluations and are trained to address issues of domestic violence.

Finally, the court rules require the use of a standard form when ordering evaluations. The standard form guides the State's family courts by specifying the state law that the courts must follow when making evaluators' appointments, the scope of the evaluations, and the parties' responsibility for paying the evaluations' costs. Nevertheless, for all five of the cases we reviewed, the Marin family court did not make its order using the standard form. According to the Marin Superior Court's human resources manager, who responded on behalf of the family court, the family court's past practice was to issue orders of evaluator appointments containing the same general case information as provided on the standard form. The human resources manager stated that the family court will now use the required standard form. Moreover, although in four of the five cases the family court's orders included required information such as the state law the appointment was made in accordance with, one case did not. The human resources manager stated this was an oversight on the part of the judicial officer at the time the appointment was made in open court.

The Marin Family Court Did Not Ensure That Private Attorneys Were Qualified Before Making Its Appointments

The methodology provided by the Marin Superior Court to identify minor's counsel appointments using its Beacon database did not yield any such cases during the period we audited. As an alternative, the Marin Superior Court's executive officer provided us with the family court's orders appointing minor's counsel that the superior court paid between April 1, 2006, and March 31, 2010. Based on our review of the orders, we identified four minor's counsel who were appointed to five contested child custody cases during our audit period.

The court rules require minor's counsel to file a declaration with the court indicating their compliance with certain requirements no later than 10 days after their appointment and before working on the case. The text box on page 39 describes the contents of the declaration. The Marin family court relies solely on the declaration to ensure that the attorneys it appoints meet the requirements. The family court's sole use of a declaration to determine the qualifications of minor's counsel does not provide us with the appropriate evidence under the audit standards we are required

statutorily to follow to draw conclusions as to whether or not the minor's counsel have met the minimum qualifications and other requirements. Typically, we would rely on evidence such as the minor's counsel's insurance, training, and court records to substantiate their qualifications. However, our legal counsel advised us that, because the court rule requires the use of a declaration, and the submission of an untruthful declaration could constitute fraud on the court, possibly leading to discipline of the signing attorney, it serves as a valid legal means for a family court to certify that minor's counsel satisfy the minimum qualifications and other requirements.

We found that the minor's counsel for three of the five cases filed their declarations, but they did so up to one year after their appointments, which far exceeded the 10-day filing period. According to the Marin Superior Court's human resources manager, who responded on behalf of the family court, the late receipt of minor's counsel declarations was an oversight by the court. By failing to obtain declarations from appointed minor's counsel promptly, the Marin family court cannot ensure at the time of appointment that the minor's counsel it appoints have the qualifications and training to properly represent the child.

Recommendations

To ensure that its FCS mediators are qualified, the Sacramento superior and family courts should do the following:

- Retain in the mediator's official personnel file any decisions to substitute additional education for experience or additional experience for the educational requirements.
- Update the current mediators' official personnel files with any missing information.
- Verify the initial training of those FCS mediators they hire who have worked at other superior courts.
- Develop a policy to retain training completion records for at least as long as an FCS mediator is a court employee.
- Take all reasonable steps to ensure that the FCS mediators meet all of the minimum qualifications and training requirements before assigning them to future mediations. If necessary, and as soon as reasonably possible, the court should require the FCS mediators to take additional education or training courses to compensate for the minimum qualifications and training requirements that were not met.

To make certain that the FCS evaluators are qualified, the Sacramento family court should take these actions:

- Develop processes to ensure that it signs all FCS evaluator declarations of qualifications annually.
- Ensure that its unlicensed FCS evaluators complete the licensing portion of the annual declarations of qualifications.
- Identify the training each of the FCS evaluators need to satisfy the court rules' requirements and ensure that they attend the trainings.
- Develop a policy to retain training completion records for at least as long as an FCS evaluator is a court employee.
- Develop processes to ensure that evaluator declarations of qualifications include all relevant information, such as the evaluator's experience.
- Ensure that FCS evaluators attach certificates for their domestic violence training to each 3111 evaluation report they prepare.
- Take all reasonable steps to ensure its FCS evaluators meet the minimum qualifications and training requirements before assigning them to any future 3111 evaluations. If necessary, and as soon as reasonably possible, the court should require the FCS evaluators to take additional education or training courses to compensate for the minimum qualifications and training requirements that were not met.

To determine whether staff are capable and suitable for positions, the Sacramento FCS should ensure it follows the superior court's probationary policy for any former employees the court rehires.

To ensure that it assists nonprobationary staff in developing their skills and improving their job performance, the Sacramento Superior Court should do the following:

- Ensure that the FCS adheres to its employee appraisal policy.
- Clarify the employee appraisal policy by specifying how often updates to the duty statement should occur.

To verify that its private mediator and evaluator panel members meet the minimum qualifications and training requirements before appointment, the Sacramento family court should take these steps:

- Obtain any missing applications and training records for private mediators and evaluators on its current panel list before appointing them to future cases.
- Ensure that if it continues to rely on the evaluators' licensure to satisfy the training requirements, the training courses that evaluators on its current panel list take are approved by the AOC or that the evaluators seek individual approvals from the AOC to take the courses.
- Create a record retention policy to retain the applications and training records related to private mediators and evaluators on its panel list for as long as they remain on the list.
- Establish a process to ensure that the private mediators and evaluators file their declarations of qualifications with the court no later than 10 days after notification of each appointment and before they begin work on a case.
- Reinstate its local rules for private mediators and evaluators to provide a minimum of three references, and for private evaluators to provide a statement that they have read the court's evaluator guidelines.

The Sacramento family court should ensure that minor's counsel submit, within 10 days of their appointment, the required declarations about their qualifications, education, training, and experience. Specifically, the family court should take these actions:

- Send annual notices to the minor's counsel it appoints, instructing them to file the declaration.
- Continue to ensure the appointment orders direct the minor's counsel to complete and promptly file the declaration.

To make sure that the minor's counsel it appoints meet the additional standards required by the superior court's local rules, the Sacramento family court should do the following:

- Obtain any missing applications for minor's counsel before appointing them to any future cases.
- Create a record retention policy to retain the minor's counsel applications for as long as they remain on its panel list.

To ensure that the FCS mediators are qualified, the Marin superior and family courts should take these steps:

- Retain documentation in the FCS mediators' official personnel files to demonstrate that they met the minimum qualifications.
- Verify the initial training of those FCS mediators hired who have worked at other superior courts.
- Ensure that the FCS mediators receive supervision from someone who is qualified to perform clinical supervision so that they can resume their participation in performance supervision, as the court rules require.

To confirm that the private evaluators the family court appoints are qualified, the Marin superior and family courts should do the following:

- Establish a process to ensure that the private evaluators file declarations of their qualifications with the court no later than 10 days after notification of each appointment and before they begin any work on a case.
- Adopt a local rule regarding procedures for the private evaluators to notify the family court that they have met the domestic violence training requirements. If the superior court chooses not to adopt a local rule, the family court should establish a process to ensure that the private evaluators attach copies of their domestic violence training certificates to their completed evaluation reports.

To verify that the private minor's counsel it appoints are qualified, the Marin family court should establish a process to ensure that minor's counsel submit, no later than 10 days after notification of their appointment and before working on a case, the required declaration of qualifications.

To make certain that it orders evaluations as the court rules require, the Marin family court should consistently use the standard form.

Chapter 2

THE SACRAMENTO AND MARIN SUPERIOR AND FAMILY COURTS COULD BETTER ADHERE TO THEIR COMPLAINT PROCESSES AND OTHER REQUIREMENTS

Chapter Summary

Both the Sacramento County Superior Court's Family and Children department (Sacramento family court) and the Marin County Superior Court's Family Court department (Marin family court) have a process for reviewing and resolving complaints about their Office of Family Court Services (FCS) mediators. Because neither court kept a log, they could not assure us of the total number of complaints they received during the four-year period that we audited. However, our review of a sample of the complaints of which we are aware revealed that the Sacramento FCS did not always follow its established process. In addition, the former manager for the Marin FCS failed to document whether or not he consulted with the mediators during the investigation of the complaints we reviewed. As a result, the Sacramento family court cannot ensure that it promptly reviews and responds to all complaints it receives regarding FCS mediators, and the Marin family court cannot ensure that it thoroughly investigates its FCS mediator complaints.

Moreover, each court has a process for reviewing and resolving complaints against the private mediators or evaluators they appoint. The Marin family court did not follow its complaint process for the one complaint it received about a private evaluator, which could expose it to criticism. Although we found that the Sacramento family court generally followed the complaint process, the superior court changed its local rules for 2010 to eliminate the peer review, a vital part of the process, and it is unclear whether, under the new process, key steps a peer review committee would perform will continue to occur. Finally, the Sacramento family court failed to develop a local rule for accepting and responding to complaints about the minor's counsel it appoints in a timely manner.

The Sacramento family court does not always use the standard form required by the California Rules of Court (court rules) when ordering the California Family Code Section 3111 evaluations (3111 evaluations) that the FCS performs. Because the standard form outlines the parties' responsibility for paying the evaluations' costs, the Sacramento family court cannot ensure that the parties are aware of and are accountable for their shares of the evaluations' costs. Moreover, the Sacramento FCS charges an hourly rate to perform the 3111 evaluations, yet the superior court's accounting

practices related to billing and collecting for these services are weak. As a result, the Sacramento County Superior Court (Sacramento Superior Court) has failed to collect almost two-thirds of the evaluations billed for the four-year period that we audited. Finally, the superior court lacks a written policy and procedures for setting and reviewing periodically its hourly rate for 3111 evaluations. The Sacramento Superior Court's executive officer stated that the court will develop procedures to assess the rate annually.

California (State) law allows the court to pay for minor's counsel when it determines that the parties cannot pay. However, the Sacramento family court did not make legally required determinations about the parties' ability to pay for minor's counsel for six of the 29 cases we reviewed. Because the court did not document its findings, it was impossible for us to determine whether any of the roughly \$8,500 in costs associated with these cases should have been borne by the parties. Moreover, the Sacramento Superior Court's process to review and approve minor's counsel invoices is weak, and the court has paid minor's counsel costs totaling more than \$175 that, under its policy, are not reimbursable. In addition, the Marin County Superior Court (Marin Superior Court) could improve controls over its payments to minor's counsel by establishing a policy that outlines the costs it will reimburse.

Although it has a written policy to mitigate potential conflicts of interest, the Marin Superior Court could strengthen its policy by specifying that potential conflicts of interest be put in writing and by indicating how the court will track the final disposition of the potential conflict. In addition, the Sacramento FCS's practice differs from its written conflict-of-interest policy. Finally, the Sacramento and Marin superior courts did not ensure that their local rules include all the rules that are required.

Both Courts Could Better Follow and Improve Their Complaint Processes

Both the Sacramento FCS and the Marin Superior Court have a process in place for reviewing and resolving complaints regarding FCS mediators. However, neither the Sacramento FCS nor the Marin Superior Court could assure us of the total number of complaints they received during the four-year period under review. In addition, the Sacramento did not always follow the established FCS mediator complaint process.

Moreover, although each superior court has a process in place for reviewing and resolving complaints against the private mediators or evaluators the family courts appoint, the Marin family court did

not follow the process for the one complaint it indicated it received against a private evaluator. In addition, effective January 1, 2010, the Sacramento Superior Court changed its local rules to eliminate vital parts of its complaint process, and it is unclear whether, under the new process, key steps will occur.

Finally, the court rules set a requirement that, as of January 1, 2010, each superior court must have a local rule for accepting and responding to complaints against the minor's counsel the family court appoints. However, the Sacramento Superior Court failed to develop the local rule in a timely manner.

The Sacramento FCS Inconsistently Followed the Established FCS Complaint Process, and Both the Sacramento and Marin FCS Can Improve Their Processes

The Sacramento and Marin family courts accept written and verbal complaints against their FCS mediators. However, according to the Sacramento FCS manager, the FCS did not keep a log of the verbal and written complaints it received until 2010. Similarly, according to the Marin Superior Court's human resources manager, who assumed administrative responsibility for the Marin FCS in January 2010, the FCS does not keep a log of the verbal and written complaints it receives. Thus, the family courts could not assure us of the total number of complaints they received between April 1, 2006, and March 31, 2010. During this period, the Sacramento FCS manager's files contained 156 written FCS mediator complaints and the Marin court human resources manager's file contained 25 written FCS mediator complaints.

The Sacramento FCS did not always follow its complaint process or respond within the specified time frame. The Sacramento FCS has a client complaint form that includes a description of its complaint process. The form specifies that the FCS supervisor or manager will review the complaint, speak with the staff involved in the case, determine whether the complaint is a matter the FCS can address or a legal matter that only the family court can address, and contact the complainant within 30 days of the complaint. Before January 1, 2010, the process used by the Sacramento FCS did not include a procedure for documenting verbal complaints or keeping a log of all complaints it receives.

Of the 156 written complaints in the FCS manager's files, we reviewed 14. Generally, we found that the complaints alleged that the FCS mediator was biased toward the other party or did not review all of the case information. We also found that for 11 of the 14 complaints the FCS manager did not perform at least one of the steps in the complaint process. For example, the FCS manager

Both the Sacramento and Marin family courts accept written and verbal complaints against their FCS mediators, but Sacramento did not keep a log of the complaints it received until 2010 and Marin does not keep a log of the complaints it receives.

Without a specific time frame for responding to complaints, the Sacramento family court cannot ensure that the FCS will address parties' complaints in a timely manner.

did not respond to nine complaints within 30 days, including one complaint to which the manager failed to respond at all. It took the FCS manager between 38 and 236 days to respond to the other eight complaints. The FCS manager stated that the responses to the complaints took longer than 30 days due to his workload. He also stated that the family court removed the 30-day deadline from the FCS complaint process in January 2010 because it believed the deadline was unrealistic. However, without a specific time frame for responding to complaints, the court cannot ensure that the FCS will address parties' complaints in a timely manner.

In addition, for five of the 14 complaints there was no indication that the FCS manager spoke with the mediators named in the complaints. The FCS manager stated that, because there has been no requirement or guidelines for how to record the complaints and the responses to the complaints, he may not have kept notes related to the cases in all the complaint files. By not following the FCS complaint process the FCS manager cannot ensure that actions that led to the complaints are brought to the mediators' attention and corrected as necessary.

Similarly, the Marin Superior Court has a process for handling complaints against FCS mediators that is described in its local rules. The complaint process requires the FCS manager to make a record of the complaint; conduct an investigation that includes consulting with the mediator named; within 15 days make a determination to replace the challenged mediator, add a second mediator to the case, or take no action; and to inform the complainant of the determination in writing. However, the process does not include keeping a log of all complaints received or documenting the consultation with the mediator.

We reviewed eight of the 25 written complaints in the superior court's human resources manager's file. Generally, we found that the complaints included allegations that the mediator did not consider all the facts of the case or demonstrated bias toward the other party. We found that the former FCS manager made his determinations within 15 days and informed the complainants of the determinations in writing in accordance with the superior court's local rules. However, for each of the eight complaints, the former FCS manager failed to document whether or not he consulted with the mediator during the complaint investigation. The human resources manager stated that he spoke with the three FCS mediators currently on staff, and they confirmed that as part of the investigation process, it was the former FCS manager's practice to consult verbally with the mediators regarding each complaint. The human resources manager also stated that the FCS mediators recalled being consulted on seven of the eight cases. Further, the human resources manager stated that, because there is no requirement in the local rules, the

former FCS manager was not obligated to document the fact that he consulted with the mediators as part of the complaint investigation process. Although the local rules we reviewed do not require the FCS manager to document the mediator consultations, by not retaining evidence of the consultations, the Marin Superior Court cannot demonstrate that complaints are thoroughly investigated and cannot show whether the former FCS manager's determinations to take no action on the eight complaints were well founded.

Both Superior Courts Could Improve Their Complaint Processes for Private Mediators or Evaluators

The family courts may appoint private mediators and evaluators to help resolve contested child custody and visitation cases, and the parties may have a reason to file a complaint about the performance or conduct of these appointees. The Marin family court accepts written complaints against the private evaluators it appoints. The Sacramento family court accepts written complaints against the private mediators and evaluators it appoints. However, neither family court keeps a log of the complaints it receives. As a result, we cannot be certain that our audit included all of the complaints the Marin and Sacramento family courts received against private mediators or evaluators from April 1, 2006, through March 31, 2010—the period that we reviewed. The Marin Superior Court's executive officer stated that the Marin family court received only one complaint against a private evaluator during our audit period. The executive officer stated that the family court does not need to keep a log of these complaints due to the small number it receives. Our review of the complaint files found in the court's administration office and kept by the Sacramento family court director of operations identified five complaints received by the court against private mediators and evaluators during our audit period. The director of operations did not explain why the court does not keep a log of these complaints.

We reviewed the one complaint made against a private evaluator that the Marin Superior Court's executive officer stated that the family court received. The text box summarizes the Marin Superior Court's procedure for handling complaints against evaluators. Although the

Procedure for Filing Complaints About a Marin Superior Court Evaluator

- The notice of complaint must
 1. Be in writing.
 2. Specify the conduct to which the complainant objects.
 3. Be provided to the evaluator.
 4. Be provided to the other party.
 5. Be lodged with the court by direct delivery to the judge.
 6. Be lodged within 20 days after issuance of the evaluation report.
- The evaluator must
 7. Lodge a written response with the court.
 8. Provide a written response to both parties within 10 days after the complaint was provided to the evaluator, the other party, and the court.
- The court must issue a statement
 9. In writing.
 10. Within 10 days after it receives the evaluator's response.
 11. Specifying the action, if any, it will take.

Source: The Marin Superior Court Local Rule 6.32L, dated January 1, 2010, and local rule 6.32J dated January 1, 2009.

complainant must perform some components of the procedure, the court is responsible for overseeing the entire complaint procedure. Of the 11 components of the procedure, we found that the family court did not ensure that five were followed. For example, we found that the notice of complaint was made more than one year after the issuance of the evaluation report, instead of within 20 days. In addition, the evaluator took 21 days instead of 10 days to prepare a written response and provide it to both parties. The family court also took 14 days instead of 10 days to issue its statement. According to the former assistant executive officer for the Marin Superior Court, the family court responded to the complaint despite the fact that it was received after the 20-day deadline because the family court believes it should respond to all complaints that deal with children and because this untimely complaint was submitted by a self-represented party. Further, the human resources manager stated that the family court did not respond within the 10-day deadlines because it was the height of the summer vacation season. Although the finding relates to only one complaint, it indicates that the Marin family court could improve how it processes complaints. Because the superior court has established a process in its local rules, when the family court deviates from this process it exposes itself to criticism.

We reviewed each of the five complaints the Sacramento family court received during our audit period. We found that the family court generally followed the process outlined in the superior court's 2009 local rule. For example, the supervising family law judge determined that two complaints against private mediators merited a review. The judge referred the complaints to a peer review committee consisting of three court-approved or FCS mediators and one attorney who had served on the court's custody subcommittee. For these two complaints, we found that the peer review committees issued summary reports to the supervising family law judge after performing procedures such as conducting interviews or reviewing the private mediator's file. However, for one of the complaints the family court did not issue the summary report to both parties as required.

Although we found that the Sacramento family court generally followed the process for reviewing complaints regarding private mediators and evaluators according to the 2009 and earlier local rules, the superior court removed vital parts of the complaint process from its 2010 local rules. Specifically, the Sacramento Superior Court eliminated the peer review committee's role in reviewing these complaints. The 2010 local rules state that the supervising family law judge may take whatever steps he or she deems appropriate and will promptly advise the complaining party of what action, if any, is taken in response to the complaint. A Sacramento Superior Court judge stated that the court eliminated

The Sacramento Superior Court removed vital parts of the process for reviewing complaints against private mediators and evaluators from its 2010 local rules.

the peer review committee from the complaint process in its 2010 local rules after full consideration by the family law judges because in their judgment the rule was unnecessary. The superior court judge also stated that the court did not receive any comments or opposition to eliminating the rule from the public or local family law bar members. However, because the Sacramento Superior Court eliminated the peer review committee's role from the process for registering complaints about private mediators and evaluators, it is unclear whether key steps the committee could consider, such as asking the appropriate professional licensing board if any complaints exist against the private mediator or evaluator, will remain. Having a defined process that explains the steps the family court will take to review and resolve complaints provides transparency for the affected parties.

In addition, the superior court judge stated that there was a misprint in the Sacramento Superior Court's 2010 local rules regarding the procedure for registering complaints about private evaluators. Specifically, the Sacramento Superior Court's 2009 local rules outlined a process for submitting complaints about evaluators much like the process for dealing with complaints against private mediators. This complaint process includes the formation of a peer review committee; the steps the peer review committee might perform; the issuance of a summary report, recommendation, or both to the supervising family law judge, evaluator, and parties; and the evaluator's opportunity to respond in writing. However, the 2010 local rules do not make it clear that there is a complaint process and state only that the supervising family law judge may take whatever steps he or she deems appropriate and will promptly advise the complaining party of what action, if any, is to be taken in response to the complaint. The superior court judge stated that the court did not intend to omit the complaint procedure and acknowledged that the court's 2010 local rules contain only a portion of the complaint procedure language. The superior court judge stated that the court will make the necessary correction. According to the family court director of operations, the correction will appear in the superior court's 2012 local rules.

Finally, the court rules required each court to develop a rule by January 1, 2010, for accepting and responding to complaints about minor's counsel's performance. We found that the Marin Superior Court established the required rule in its 2010 local rules. The former Marin supervising family court judge stated that the court did not receive any complaints against minor's counsel in FCS cases between January 1, 2010, and March 31, 2010. However, we found that the Sacramento Superior Court did not establish the required rule as part of its 2010 local rules. The Sacramento family court director of operations stated that the family court did not receive any complaints regarding minor's counsel between January 1, 2010,

The Sacramento Superior Court did not establish the required rule for accepting and responding to complaints about minor's counsel's performance in a timely manner.

and March 31, 2010. A Sacramento Superior Court judge did not explain why the local rule was not established by January 1, 2010, as required, but the court has adopted a local rule that became effective January 1, 2011. However, by not developing a rule for accepting and responding to complaints about minor's counsel sooner, the Sacramento Superior Court did not ensure that parties knew how to file complaints against minor's counsel or inform the public about how the family court would review and resolve these complaints.

The Sacramento Family Court Does Not Always Comply With Court Rules for Ordering 3111 Evaluations, and the Superior Court's Accounting Process for These Evaluations Is Weak

The State's court rules require all courts to order 3111 evaluations using a standard form that, when completed by the court, specifies each evaluation's scope and outlines the parties' responsibilities for paying the evaluation's cost. However, we found that the Sacramento family court does not consistently follow this administrative practice. In addition, the superior court's billing process for evaluation costs is weak, and it has failed to collect almost two-thirds of the evaluation costs from the four-year period we reviewed. Finally, the Sacramento Superior Court does not have a written policy or procedures for setting and periodically reviewing its hourly evaluation rate. However, the executive officer stated that the superior court will be developing procedures to assess the 3111 evaluation rate annually.

The Sacramento Family Court Does Not Consistently Use the Standard Form When Ordering 3111 Evaluations

For many years the State's court rules have required that all courts use a standard form when ordering 3111 evaluations. However, the Sacramento family court did not consistently use the standard form to order these evaluations, nor did the court always complete the standard form properly when it chose to use it. The standard form includes a description of the parties involved in the evaluation, the scope and purpose of the evaluation, and an allocation of the evaluation fees between the parties.

Using the Sacramento Superior Court's Sustain case management database and the Sacramento FCS's database, we identified 92 cases from April 1, 2006, through March 31, 2010, in which an evaluation was performed.¹⁰ We selected nine of the cases and reviewed

Of the nine cases in which we reviewed the Sacramento family court's orders appointing the FCS evaluator, we had concerns about five.

¹⁰ Please refer to the Scope and Methodology section of this report for the Bureau of State Audits' data reliability assessment of these databases.

the court orders appointing the FCS evaluator. Of the nine court orders, we had concerns about five. The family court ordered one evaluation using a nonstandard form, and it did not indicate the allocation of costs between the parties. For another order, the family court used the standard form; however, the judge left blank the part of the form allocating the evaluation costs between the parties. Two other orders contained all the necessary information, but the family court used a nonstandard form rather than the form that the court rules require. In the final order about which we had concerns, the family court ordered the evaluation on a minute order—the form the family court judge uses during a hearing to note parties present and decisions made—and the minute order did not specify the purpose or scope of the evaluation or an allocation of costs between the parties.

A Sacramento Superior Court judge agreed that for one case the family court was unable to locate the order in the file, and did not rule upon the allocation of costs between the parties. The judge also agreed that the family court did not rule on the allocation of costs between the parties for the case in which the form was left blank. Further, the judge agreed that the court did not use the standard form for the two cases in which nonstandard forms were used. Finally, for the case in which the evaluation was ordered using a minute order, the judge stated that the standard form in use at the time that the appointment was made declared that the form was “optional.” The judge also stated that the form’s declaration was recognized as an inconsistency by the Judicial Council of California (Judicial Council), which later adopted the standard form as “mandatory.” Despite the discrepancy on the standard form, our review of the court rules found that the requirement of the use of the standard form has been in effect since at least January 2005. By not using the standard form, the family court is not in compliance with the court rule and cannot ensure that it prevents misunderstandings between the parties about the evaluation’s purpose and who will pay for it.

The Sacramento Superior Court’s Accounting Processes for 3111 Evaluations Is Weak

The Sacramento Superior Court’s executive officer stated that the court has written procedures for billing and collecting for 3111 evaluations. However, what he provided to us were procedures related to setting up a new account in the evaluations billing database rather than detailed guidelines for reviewing and approving a bill for the 3111 evaluations the FCS performs. California’s Administrative Office of the Courts (AOC) issued its *Trial Court Financial Policies and Procedures* (financial policy), dated March 15, 2006, to establish the minimum standards

for each court to use to develop an effective system of internal controls to help prevent employees from engaging in high-risk activities, committing errors, or concealing irregularities without management detection. The financial policy notes that having an effective system of internal controls also generates efficient performance of daily duties because employees follow clear and concise management guidelines, and it states that a key element of an internal controls system is having comprehensive policies and procedures.

After learning about a practice that an accounting supervisor described to us, we determined that the Sacramento Superior Court's accounting staff do not verify the mathematical accuracy of the information on the Summary of FCS Services (summary) that they receive from the FCS before they prepare billing statements to send to the parties. The summary includes the types of services performed by the FCS, the billable hours, and the FCS hourly rate. However, the summary does not specify how to allocate the costs between the parties. Instead, the superior court's accounting procedures related to setting up a new account in the evaluations billing database state that the FCS receivables are usually split evenly among the parties. The executive officer stated that these procedures were established in 2006 and have not been updated to reflect the accounting department's current practice. According to the accounting supervisor, in May 2009, accounting began asking the FCS for the correct allocation between the parties before preparing the billing statements. Until the superior court updates its accounting procedures related to billing FCS evaluation costs to include steps for verifying the mathematical accuracy of the FCS summary and the proper allocation of costs between the parties, it cannot ensure that it bills each party the correct amount. Also, without procedures to guide staff, the court creates an opportunity for errors or irregularities to go undetected and for staff to be uncertain of or ineffective in their duties.

In addition, the Sacramento Superior Court's efforts to collect for 3111 evaluations are ineffective. The accounting supervisor described the court's collection practice as consisting solely of invoicing the parties for payment on four separate occasions. Specifically, according to the accounting supervisor, the superior court's practice is to send out billing statements immediately upon receiving the summary from the FCS and to send statements again at 30-, 60-, and 90-day intervals. As Table 3 shows, between April 1, 2006, and March 31, 2010, the superior court billed roughly \$107,000 in evaluation services and collected about \$39,000, or just over one-third of the amount billed. The table provides a breakdown of the number of 3111 evaluations billed and the respective amounts billed, collected, and owed to the superior court by calendar year.

During the four-year period that we audited, the Sacramento Superior Court billed roughly \$107,000 in evaluation services and collected about \$39,000.

Table 3
Breakdown of the Sacramento Superior Court's 3111 Evaluations Billed by Calendar Year for the Period April 1, 2006, Through March 31, 2010

	NUMBER OF EVALUATIONS BILLED*	AMOUNT BILLED†	AMOUNT COLLECTED‡	AMOUNT UNCOLLECTED§
April 1, 2006 – December 31, 2006	32	\$17,931	\$5,041	\$12,889
2007	39	17,024	5,741	11,283
2008	69	50,808	18,602	32,207
2009	34	20,635	9,316	11,319
January 1, 2010 – March 31, 2010	1	600	0.00	600
Totals	175	\$106,998	\$38,700	\$68,298

Source: Sacramento County Superior Court evaluations billing database.

Note: Please refer to the Scope and Methodology section of this report for the Bureau of State Audits' data reliability assessment of this database.

* The *Number of Evaluations Billed* column represents the number of 3111 evaluations, by case and evaluation date, that were forwarded to the accounting unit for fee processing.

† The *Amount Billed* column shows the total amount of 3111 evaluations billed during each period.

‡ The *Amount Collected* column represents payments the court received for these evaluations through March 31, 2010.

§ The *Amount Uncollected* column represents the unpaid balance for these evaluations as of March 31, 2010.

According to our review of the evaluations billing database, as of March 31, 2010, the amount uncollected for 3111 evaluations was more than \$612,000 and constituted more than 6,800 evaluations. The amount uncollected for 3111 evaluations was more than \$540,000 before the start of the audit period on April 1, 2006, and thus has been outstanding for more than four years.

The Sacramento Superior Court's executive officer stated that the court plans to update its collection process. The executive officer did not state when the update would occur, but the officer did state that the court will evaluate options available beyond the initial payment requests it currently makes. Specifically, the executive officer indicated that possible options would be the use of a private collection agency or the Franchise Tax Board to collect past-due amounts. Until it updates the collection process, the court will remain ineffective in collecting amounts that parties owe for 3111 evaluations that the FCS performs.

Finally, the Sacramento Superior Court does not have a written policy or procedures for setting and periodically reviewing the hourly rate it charges for the 3111 evaluations that the FCS performs. According to the chief financial officer, the internal audit unit established in October 2008 the \$75 hourly rate the superior court currently charges. The rate was developed using the standard cost for the appropriate staff person's position, including benefits and the indirect cost rate approved by the AOC. The chief

financial officer also stated that the superior court does not have a set timetable for reviewing and adjusting this rate periodically. The Sacramento Superior Court's executive officer stated that the internal audit unit will be developing procedures to assess the 3111 evaluation rate annually, and a review will be conducted in the fall of each year after any changes in salaries and benefits are known. However, the executive officer did not state when the superior court would adopt a written policy or procedures. Without a written policy and procedures in place to review periodically its hourly rate for 3111 evaluations, the superior court cannot ensure that the rate remains commensurate with its personnel costs.

The Sacramento Courts Could Significantly Improve Their Oversight of the Fees Paid to Minor's Counsel

State law specifies that the parties shall pay minor's counsel fees unless the family court determines that the parties are unable to pay. Further, effective January 2008, the court rules specify the time frame within which a family court should make its determination about the parties' ability to pay. However, we found that the Sacramento family court had not made the necessary determination about the parties' ability to pay for minor's counsel. Therefore, because the court did not document its findings, we could not determine what portion of the roughly \$8,500 the superior court paid to minor's counsel in six of the 29 cases we reviewed should have been borne by the parties. In

addition, weaknesses exist in the process that the superior court has in place to review and approve minor's counsel invoices, and the superior court's accounts payable unit does not always ensure that it pays minor's counsel costs in accordance with the established policies.

The Sacramento Superior Court's Minor's Counsel Costs by Fiscal Period April 1, 2006, Through March 31, 2010

April 1, 2006, through June 30, 2006	\$44,455
Fiscal year 2006–07	135,500
Fiscal year 2007–08	282,026
Fiscal year 2008–09	356,577
July 1, 2009, through March 31, 2010	<u>234,651</u>
Total	\$1,053,209

Source: Sacramento County Superior Court.

Note: The minor's counsel costs are presented as background information only.

The Sacramento Family Court Does Not Always Comply With Statute and Court Rules for Paying Minor's Counsel

State law requires the family court to determine whether the parties are unable financially to pay all or a portion of the minor's counsel fees and states that the county is responsible for any remaining minor's counsel fees.¹¹ As the text box shows, the Sacramento Superior Court stated it paid minor's counsel more than \$1 million over

the four-year period that we audited. The chief financial officer

¹¹ California Family Code Section 3153(b)(3) requires the counties to pay for minor's counsel. However, since 1997 trial courts have received funding from the State instead of from the counties.

of the Sacramento Superior Court stated that when establishing its hourly rate for minor's counsel, the Sacramento court historically follows the rates put in place by the Sacramento County Conflict Criminal Defenders unit (CCD unit), because it performs work similar to that of the minor's counsel. The CCD unit's current rate is \$80 an hour.

During our review of 29 of the 47 cases that the Sacramento Superior Court's accounting manager determined were instances in which the superior court paid minor's counsel costs, we found six cases for which the family court had not made the necessary determination about the parties' ability to pay. Specifically, two orders appointing minor's counsel did not include a section specifying how the minor's counsel fee would be paid, and in a third order the family court commissioner left that section blank. A Sacramento Superior Court judge agreed that the two orders did not include the section that specifies how the minor's counsel fees would be paid. However, the superior court judge stated that in the third order, the family court commissioner ordered the court to pay the minor's counsel fee. We noted, however, that the order specifically has a category that states, "Minor's counsel shall be *court* compensated." Thus, we question why the family court commissioner would leave the section blank instead of checking off this category to order the superior court to pay the minor's counsel fee.

Moreover, as of January 2008, certain guidelines were added by the Judicial Council to the statewide court rules that family courts follow when dealing with minor's counsel. The court rules affirm that family courts must make determinations, within certain recommended time frames, about the parties' ability to pay for minor's counsel. Specifically, the court rules recommend that each family court determine the parties' ability to pay at the time counsel is appointed, within 30 days after the appointment, or at the next hearing. For the remaining three of six cases for which the family court had not determined the parties' ability to pay, the family courts' orders did not conform to the court rules. In the orders for two cases, the judge left blank the section that specifies how the minor's counsel fees would be paid. Further, the files for the two cases did not include any orders making the necessary determinations within 30 days of the appointments of minor's counsel, or at the next hearings. In the third order, the judge noted that the determination of payment would be made at a future hearing. However, we found no subsequent order in the case file making that determination.

Of the 29 cases we reviewed in which the Sacramento Superior Court paid minor's counsel costs, we found six cases for which the family court had not determined the parties' ability to pay.

The Sacramento family court recognizes that it did not make the necessary financial findings for the six cases.

A Sacramento Superior Court judge stated that the family court recognizes that it did not make the necessary financial findings for these six cases. Specifically, the judge stated that although the judges in the cases “reserved” ruling on the issue of payment for minor’s counsel, the family court did not later make final rulings on the issue of payment allocations. As a result of the family court’s not making the necessary determinations in these instances, the superior court may have paid the fees for the minor’s counsel improperly. The superior court’s accounting manager gave us accounting records indicating that the total amount paid by the court for these six cases was roughly \$8,500 during the four-year period that we audited. However, we were unable to quantify the potential improper payment because without the family court’s determination, we cannot ascertain the costs that the parties should have paid and what costs, if any, the superior court should have paid.

The Sacramento Superior Court’s Process for Reviewing and Approving Minor’s Counsel Invoices Is Weak

The Sacramento Superior Court’s March 2008 Policy for the Appointment and Payment of Claims for Minor’s Counsel in Family Law Matters (payment policy) states that once the family court has determined that the court should pay the fees, the minor’s counsel should submit their claims to the superior court’s accounts payable unit (accounting). However, the payment policy lacks key steps for accounting to ensure that payments made to minor’s counsel are proper. For example, although the payment policy requires minor’s counsel to attach their claims to copies of the appointment orders and the orders indicating that the superior court should pay the costs, the policy lacks instructions for staff to make certain that the orders are present before making the payment.

Further, the payment policy does not require management to review and approve invoices. A secondary review helps to identify and correct any errors promptly. In fact, we found one invoice for roughly \$600 that a minor’s counsel submitted twice and accounting paid both times. The accounting supervisor stated that the minor’s counsel realized an error had been made and adjusted a future invoice to correct the error. However, if accounting had performed a secondary review, it may have been able to identify and correct the error and avoid making a duplicate payment.

An accounting supervisor provided us with draft procedures, dated March 15, 2010, for processing minor’s counsel claims. The draft procedures include instructions for staff to verify that the orders are attached to the minor’s counsel invoice and to contact counsel if the orders are not present. The draft procedures

also instruct the accounting supervisor to review the invoices before payment is made. The superior court's accounting manager stated that accounting began implementing the draft procedures in March 2010 but that the procedures are still a work in progress. Once accounting finalizes, approves, and implements fully the draft accounting procedures, it should be better able to ensure that minor's counsel payments are proper.

From the 29 of the 47 cases that the Sacramento Superior Court's accounting manager determined were instances in which the superior court paid minor's counsel costs during our audit period, we selected five cases and reviewed an invoice for each case. Of the five minor's counsel invoices totaling \$3,700, we had concerns with three. Specifically, the court paid one invoice, subject to the March 2008 payment policy, that included costs for paralegal fees at a rate of \$35 per hour rather than the rate of \$15 per hour stated in its policy. In addition, the minor's counsel did not obtain prior approval from the family court to invoice the superior court for paralegal fees of about \$17. The invoice also included roughly \$75 for photocopies, faxes, postage, and mileage that either are not reimbursable under the March 2008 policy or are reimbursable only with additional documentation, such as original receipts, which the minor's counsel did not provide. According to the accounting supervisor, accounting will deduct from the next invoice that this minor's counsel submits the costs that it paid improperly.

One reason that the superior court paid minor's counsel costs improperly is that accounting was not following the March 2008 policy. According to the chief financial officer, the March 2008 payment policy is the official superior court policy. The chief financial officer also stated that although the payment policy became effective in March 2008, accounting did not follow it until March 2010 because accounting did not receive the policy from the family court director of operations until then.

The other two invoices that raised concerns were bills for minor's counsel services provided before March 2008. The superior court's accounting manager stated that before March 2008, accounting used Sacramento County's reimbursable cost list to process minor's counsel claims. However, accounting improperly paid minor's counsel roughly \$85 for paralegal, postage, and photocopying costs for these two invoices. The county's reimbursable cost list does not include paralegal fees. The superior court's accounting manager stated that the paralegal fees were paid according to the court's practice instead of according to the list. In addition, the court paid for postage that the list specifically indicates is nonreimbursable, and the court also paid for photocopies without obtaining the original receipt to ensure that the cost did not exceed 10 cents per copy. According to the superior court's accounting manager,

We had concerns with three of the five invoices we reviewed—in one case, the court paid paralegal fees at a rate of \$35 per hour rather than the rate of \$15 per hour stated in its policy.

Although the March 2008 payment policy is the official superior court policy, the Sacramento Superior Court was not following it and improperly paid more than \$175 in costs for minor's counsel.

the postage and photocopying costs were approved due to an oversight. Nevertheless, overall, the Sacramento Superior Court improperly paid more than \$175 in costs for three of five minor's counsel invoices we reviewed. Although the amount is nominal, it demonstrates that the court did not pay for minor's counsel costs in accordance with the established policies.

The Marin Superior Court Has a Process for Setting Hourly Rates, but It Lacks a Policy That Defines Reimbursable Costs for Minor's Counsel

Court rules set the requirements regarding compensation to be paid to a minor's counsel, including requiring that the court determine a reasonable sum for compensation and expenses for minor's counsel. The Marin Superior Court has a process to determine and set the hourly rate it pays minor's counsel. We also found that the court generally follows its invoice review process. However, it lacks a policy that outlines the costs for which it will reimburse minor's counsel. Therefore, we were unable to determine if the minor's counsel's costs were appropriate.

The methodology provided by the Marin Superior Court to identify minor's counsel appointments using the Beacon case management database did not yield any such cases during the period we audited. As an alternative, the Marin Superior Court's executive officer gave us a summary of the total payments the superior court made to minor's counsel during our audit period, along with 39 minor's counsel invoices as support for the payments. Our review of the invoices and the judges' orders identified five minor's counsel appointments that occurred during the period that we audited.

Table 4 summarizes the minor's counsel fees and costs the Marin Superior Court stated that it paid during the period under review. The table also shows that minor's counsel actively represented a child in as many as nine cases during the four-year period covered by our audit.

The Marin Superior Court Has a Process to Determine Minor's Counsel Compensation

The Marin Superior Court has a process that it uses to determine the hourly rate it pays minor's counsel. The court's executive officer stated that the superior court judges determine when rate increases shall occur and how much the increase shall be. The executive officer also stated that the superior court judges last revised the minor's counsel rate from \$50 per hour to \$65 per hour in April 2001 based on a comparison of rates paid by seven other Bay Area courts. In addition, the executive officer indicated that the

rate of \$65 per hour remains appropriate because the family court is still able to find and appoint family law attorneys with the necessary training and experience to represent children and who are willing to accept the hourly rate.

Table 4
Minor's Counsel Fees and Costs the Marin Superior Court Stated It Paid
April 1, 2006, Through March 31, 2010

	APRIL 1, 2006, THROUGH JUNE 30, 2006	FISCAL YEAR 2006-07	FISCAL YEAR 2007-08	FISCAL YEAR 2008-09	JULY 1, 2009, THROUGH MARCH 31, 2010
Minor's counsel fees	\$6,729	\$6,724	\$3,910	\$3,775	\$4,774
Minor's counsel costs	110	100	171	111	58
Total fees and costs	\$6,839	\$6,824	\$4,081	\$3,886	\$4,832
Number of cases invoiced by minor's counsel	6	9	2	4	3
Number of hours invoiced by minor's counsel	107	104	60	57	73

Source: Bureau of State Audits' analysis of the minor's counsel invoices provided by the Marin Superior Court.

Note: The amounts shown in the "Minor's counsel fees" row are not a product of simply multiplying the number of hours invoiced by the hourly rate of \$65 because in some instances the invoices contained mathematical inaccuracies or adjustments.

According to the Marin Superior Court's executive officer, it is widely acknowledged that \$65 per hour is not even close to the market rate for family law attorneys, but several of these attorneys take court appointments at well below market rate on behalf of the family court to ensure that children have competent and appropriate counsel when their interests are at risk. The executive officer stated that if in the future the family court has difficulty finding competent, appropriate counsel for children at the current rate, the superior court judges will analyze the rate at that time. In addition, the executive officer stated that the number of cases and commensurate number of hours of representation are minimal, and this situation may be a primary reason why the \$65 hourly rate has not been challenged by minor's counsel for more than nine years.

The Marin Superior Court Lacks a Policy for Reimbursing Minor's Counsel Costs

The Marin Superior Court lacks a policy outlining the costs that it will reimburse minor's counsel. The AOC's financial policy, dated March 15, 2006, establishes the minimum standards for each court to use to develop an effective system of internal

controls to help prevent employees from engaging in high-risk activities, committing errors, or concealing irregularities without management detection. The financial policy notes that a key element of an internal controls system is comprehensive policies and procedures and that having an effective system of internal controls also generates efficient performance of daily duties because employees are able to follow clear, concise management guidelines.

Because no policy exists for paying minor's counsel, we asked the Marin Superior Court's chief financial officer to explain the process used to reimburse the costs of minor's counsel. According to our review of 39 invoices that the superior court provided, the court generally follows its review-and-approval process—described by the chief financial officer—for minor's counsel invoices. Specifically, according to the chief financial officer, each minor's counsel submits to accounting an Ex Parte¹² Application and Order for Payment of Attorney Fees and Costs (ex parte application), which includes the minor's counsel's appointment date, a summary of all time spent representing the minor, and the invoices that support the summary. Accounting staff ensure that the invoices are accurate and that the appointment date occurred before the invoice period. The accounting staff then forward the ex parte application to the family court judge for approval.

We would expect the Marin Superior Court to have a policy that states the maximum reimbursable mileage rate and the rate per page for photocopies and that also requires the attorney to provide original receipts.

We were unable to determine if the costs shown in the minor's counsel's invoices were appropriate because the Marin Superior Court lacks a policy that outlines reimbursable costs. For example, we would expect the court to have a policy that states the maximum reimbursable mileage rate and the rate per page for photocopies and that also requires the attorney to provide original receipts. The executive officer for the Marin Superior Court indicated that minor's counsel use the invoices primarily for reporting hours spent representing children. Further, the executive officer stated that the judicial officer reviews occasional photocopy costs and other case-related *de minimis*, or "minor," costs and always has the discretion to reduce or decline to pay any amount deemed unreasonable. The executive officer stated that the Marin Superior Court will be developing a policy for reimbursing mileage and other incidental costs such as copies and faxes. However, until it establishes a written policy, the Marin Superior Court is allowing inconsistent treatment of minor's counsel invoices because one judge may allow expenses that another judge rejects.

¹² The Latin phrase *ex parte* means "at the request of and for the benefit of a single party."

Both the Sacramento FCS and the Marin Superior Court Have Written Policies to Mitigate Conflicts of Interest for Their FCS Mediators

Because one goal of mediation is to help guide the parties to an agreement on parenting their child in a way that is in the child's best interest, both parties expect and deserve an impartial mediator. The State's court rules require each mediator to disclose any actual or potential conflicts of interest. In the event of a conflict of interest, the mediator must suspend mediation and discuss how to resolve the conflict of interest to the parties' satisfaction or according to local rules. Further, the court may order mediation to continue with another mediator or offer the parties alternatives. The mediator cannot continue unless the parties agree in writing to continue mediation despite the disclosed conflict of interest.

Both the Sacramento FCS and the Marin Superior Court have written policies to mitigate any potential conflicts of interest. However, the Marin Superior Court could strengthen its policy. In addition, the Sacramento FCS's practices regarding conflicts of interest are inconsistent with its written policy, but it consistently follows its own standard practices.

The Marin Superior Court follows the Judicial Council's *Code of Ethics for the Court Employees of California* (code of ethics), which instructs the court's employees to treat each member of the public equitably and not to use their positions to benefit themselves, their family, or their friends. To further prevent conflicts of interest from occurring, the Marin Superior Court has a specific conflict-of-interest policy (conflict policy) in its Personnel Plan and Policies, revised October 9, 2006. The conflict policy defines *conflict of interest* and instructs employees with questions regarding potential conflicts of interest to speak with their immediate supervisor or the human resources manager. Both documents apply to the Marin Superior Court's FCS mediators, and together the code of ethics and the court's conflict policy appear to be reasonable instructions to FCS mediators about what constitutes a conflict of interest and how to avoid a conflict or begin to resolve one. However, the conflict policy does not require an FCS mediator to put in writing potential conflicts of interest, nor does it specify how the Marin Superior Court will track the final disposition of each potential conflict. Without these components, the Marin Superior Court cannot ensure that its policy is effective and that the FCS mediators follow it. According to the Marin Superior Court's human resources manager, on the very rare occasion that a potential conflict of interest results in the reassignment of a case, the Marin Superior Court will endeavor to create a written record of the conflict and to track the final disposition.

The conflict policy does not require an FCS mediator to put in writing potential conflicts of interest, nor does it specify how the Marin Superior Court will track the final disposition of each potential conflict.

According to the Marin Superior Court's human resources manager, the Marin FCS identified approximately eight potential conflicts of interest in the four-year period from April 1, 2006, through March 31, 2010. The executive officer stated that this number was an approximation based on the memory of one FCS mediator who, because she resides within Marin County and knows many people, has had conflicts of interest in mediation cases. The executive officer stated that when conflicts arose with this mediator, the court reassigned the cases to different mediators. The court executive officer also indicated that the other FCS mediators do not reside in Marin County and are much less likely to have potential conflicts of interest. Nevertheless, because the Marin Superior Court does not document and track its potential conflicts of interest and their disposition, we could not determine whether the eight potential conflicts of interest that the human resources manager cited were conflicts as defined in the superior court's conflict policy, nor could we confirm how the superior court resolved them.

The Sacramento FCS's guidelines, FCS Mediation and Procedures Manual (manual), define possible conflicts of interest and outlines the procedure FCS mediators should follow when they encounter a potential conflict of interest. The manual specifies that conflicts of interest may occur for a mediator in cases that involve family law attorneys or their spouses or that concern relatives or friends of the mediator. The Sacramento FCS's policy directs mediators to avoid conflicts of interest; thus, parties in a case may be referred to private mediators unless both parties agree to waive the conflict. If the parties agree to waive the conflict, the manual instructs Sacramento FCS mediators to conduct mediation with the parties but not to include recommendations in the mediation report. According to the FCS manager, however, the manual does not align precisely with the Sacramento FCS's current practice. The FCS manager stated that he refers cases with potential conflicts of interest to private mediators as soon as they arise rather than following the manual and allowing FCS mediators, with the parties' waiver, to conduct mediation. Although the Sacramento FCS's practice differs from the policy delineated in its manual, the practice appears to be a reasonable approach to resolving a conflict of interest.

Although the Sacramento FCS's practice differs from the policy delineated in its manual, the practice appears to be a reasonable approach to resolving a conflict of interest.

The Sacramento FCS uses a log to record each case and whether the FCS refers the case to a private mediator because a potential conflict of interest exists or because the FCS has more cases to mediate than its resources allow. However, the Sacramento FCS manager was unable to determine how many potential conflicts of interest were identified between April 1, 2006, and December 31, 2008, because the Sacramento FCS did not consistently note in the log the reason for referring a mediation case

to a private mediator. The log indicates that during this period the Sacramento FCS referred four mediations to private mediators for potential conflicts of interest. The other logs also show that between January 1, 2009, and March 31, 2010, the FCS referred 18 mediations to private mediators for potential conflicts of interest. However, we found one case in which the log contradicted the information in the case file. The log indicated that the referral occurred because of a potential conflict of interest, but the information in the FCS case file indicated that the referral was due to resource limitations. Because the log is not accurate, the Sacramento FCS cannot be certain of the number of referrals it made to private mediators for potential conflicts of interest in accordance with its practice.

Further, the Sacramento FCS manager stated that it was the Sacramento FCS's practice to document in the FCS file the nature of the conflict. We reviewed five cases referred to private mediators due to potential conflicts of interest and found that the Sacramento FCS documented the reasons for referral in each of the cases. The Sacramento FCS referred one of the cases to a private mediator because the family law attorney for one of the parties is married to an FCS mediator. The Sacramento FCS referred the remaining four cases to private mediators because the parties involved were court employees. Although the FCS's conflict-of-interest policy does not list court employment as a conflict of interest, it appears reasonable that the FCS would refer cases involving court employees to private mediators.

Both Superior Courts Lack Required Local Rules to Direct Their Family Courts' Appointment Processes

The Sacramento and Marin Superior Courts' local rules that we reviewed lacked certain rules, such as those the Judicial Council's court rules require to ensure that evaluators can withdraw from cases when necessary and that parties are informed about how to find qualified evaluators. The court rules require local rules to help ensure that the family courts make and manage their appointments consistently and effectively and that the parties to a contested child custody and visitation case have information about how a family court will process their case. By not adopting the local rules that the court rules require, the Sacramento and Marin Superior Courts cannot achieve these results.

As Table 5 on the following page shows, the Sacramento Superior Court's 2009 and 2010 local rules lacked a rule allowing evaluators to petition the family court to withdraw from a case. Further, the superior court's 2009 and 2010 local rules did not establish a process for informing the public about how to find qualified evaluators in the jurisdiction. A Sacramento Superior Court judge

stated the required rules were missing from the local rules due to an oversight. The superior court judge also stated that the rules have been written or are in the process of being written, and will go into effect at the earliest possible time after the superior court has complied with the requirement to allow public review and comment. However, the Sacramento Superior Court judge noted that the superior court informs the public about how to find qualified evaluators in the jurisdiction by placing a list of evaluators on its Web site and making the list available at the family court's Family Law Facilitator's Office. Nevertheless, the court rules require the superior court to adopt a local rule.

Table 5**Adoption of Required Local Rules in the Sacramento and Marin Superior Courts' 2009 and 2010 Local Rules**

CALIFORNIA RULES OF COURT REQUIRE THE ADOPTION OF LOCAL RULES RELATED TO THE FOLLOWING:	COURT RULES EFFECTIVE DATE	SACRAMENTO FAMILY COURT'S 2009 LOCAL RULES	SACRAMENTO FAMILY COURT'S 2010 LOCAL RULES	MARIN FAMILY COURT'S 2009 LOCAL RULES	MARIN FAMILY COURT'S 2010 LOCAL RULES
Allowing evaluators to petition the court to withdraw from a case	January 2000	No	No	Yes	Yes
Establishing a process for informing the public how to find qualified evaluators in the jurisdiction	January 2004	No	No	No	Yes
Allowing or disallowing peremptory challenges	January 2000	Yes	Yes	No	No

Sources: California Rules of Court dated January 1, 2009, and January 1, 2010; Sacramento County Superior Court Local Rules dated January 1, 2009, and January 1, 2010; and Marin County Superior Court Local Rules dated January 1, 2009, and January 1, 2010.

As Table 5 also shows, the Marin Superior Court's 2009 and 2010 local rules lacked the required local rule allowing or disallowing peremptory challenges. A peremptory challenge occurs when a party challenges the assignment of a specific FCS mediator, and a rule disallowing such challenges ensures that there is no delay in mediation because the parties are attempting to secure a mediator they believe would be favorable to them. The Marin supervising family court judge stated that the superior court intends to adopt a local rule as required regarding peremptory challenges during the July 1, 2011, local rulemaking cycle, and the superior court's failure to adopt such a rule earlier was an oversight. By not including the required rule allowing or disallowing peremptory challenges, the Marin Superior Court cannot ensure that parties in mediation about a family law matter are informed about whether they have the ability to file a peremptory challenge related to the family court's assignment of an FCS mediator.

Although its 2009 local rules did not include the required rule establishing a process for informing the public about how to find qualified evaluators in the jurisdiction, the Marin Superior Court added this process to its 2010 local rules. The Marin supervising family court judge stated that the superior court corrected its oversight in its January 1, 2010, local rules, but the judge did not explain why the court did not develop the local rule when the court rule went into effect on January 1, 2004.

Recommendations

To ensure that all complaints regarding FCS staff are tracked properly and reviewed promptly, the Sacramento FCS and family court should take these steps:

- Keep a complete log of all verbal and written complaints they receive regarding FCS staff.
- Follow the established complaint process, including retaining the appropriate documentation to demonstrate adherence to the process.
- Establish specific time frames for responding to complaints.

To make certain that all complaints regarding FCS staff are tracked properly and reviewed promptly, the Marin Superior Court should do the following:

- Keep a complete log of all verbal and written complaints it receives regarding FCS staff.
- Ensure that FCS follows the court's established complaint process, including retaining the appropriate documentation to demonstrate adherence to the process.

To verify that all complaints received about the private mediators or evaluators that the family courts appoint are tracked and reviewed promptly, the Sacramento and Marin Superior Courts should keep logs of all complaints they receive. In addition, the Marin Superior Court should make certain that for future complaints it may receive, the court follows the steps stated in its process for registering complaints about evaluators.

To ensure that it provides transparency for the parties in family court cases, the Sacramento Superior Court should develop a local rule that defines its process for receiving, reviewing, and resolving complaints against private mediators and evaluators.

To clearly identify its process for registering complaints about private evaluators, the Sacramento Superior Court should make the necessary corrections to its 2012 local rules to add the complaint procedures that were omitted in error.

To strengthen its accounting process for 3111 evaluations, the Sacramento Superior Court should take these actions:

- Updating its accounting procedures related to billing FCS evaluation costs to include steps for verifying the mathematical accuracy of the FCS summary and the proper allocation of costs between the parties.
- Updating its process for collecting amounts it is owed for 3111 evaluations.
- Developing a written policy for reviewing periodically the hourly rate it charges parties for 3111 evaluations.

To strengthen its processes related to minor's counsel fees, the Sacramento superior and family courts should do the following:

- Ensure that determinations about the parties' ability to pay are made in accordance with the court rules and are properly reflected in the orders appointing the minor's counsel.
- Finalize, approve, and implement the draft procedures for processing minor's counsel invoices.
- Make certain that accounting follows the appropriate court policy when reviewing minor's counsel costs and that accounting does not pay costs that the policy does not allow.
- Take the steps necessary to confirm that accounting does not make duplicate or erroneous payments to minor's counsel.
- Take necessary steps to collect minor's counsel costs that accounting has paid improperly.

To ensure that it reimburses only appropriate and necessary minor's counsel costs, the Marin Superior Court should develop a written policy that outlines the costs it will reimburse and that requires the attorneys to provide original receipts for their costs.

To make its conflict-of-interest policy more effective, the Marin Superior Court should modify its conflict-of-interest policy to include documenting the cause of potential conflicts of interest in writing and tracking their final disposition.

To make its conflict-of-interest process more effective, the Sacramento FCS should act in these ways:

- Continue to maintain its log recording potential conflicts of interest.
- Update its conflict-of-interest policy to match its practice of identifying cases that could present a real or perceived conflict of interest, including cases involving court employees, and to include its current practice of documenting potential conflicts of interest in the FCS files.

The Sacramento and Marin Superior Courts should develop and implement processes to review periodically the court rules to ensure that their local rules reflect all required court rules.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: January 20, 2011

Staff: Joanne Quarles, CPA, Audit Principal
Sharon L. Fuller, CPA
Jason Beckstrom, MPA
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IT Audit Support: Michelle J. Baur, CISA, Audit Principal
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Legal Counsel: Donna Neville, Associate Chief Counsel
Stephanie Ramirez-Ridgeway, Senior Staff Counsel

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

(Agency response provided as text only.)

Superior Court of California
County of Sacramento
720 Ninth Street
Sacramento, California 95814

January 7, 2011

Elaine Howle*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Re: Sacramento Family Court Audit (Report 2009-109)

Dear Ms. Howle,

This letter is in response to the Bureau of State Audits' (bureau) report and recommendations related to the bureau's audit which examined the Sacramento Superior Court's appointment of varied professionals in family law matters involving child custody and visitation.

Our court is largely in agreement with the bureau's recommendations. In fact we have already begun the process of implementing the great majority of recommendations contained within the bureau's report. Other recommendations are under consideration some of which will likely prove difficult to implement due to a court-wide lack of resources. The Sacramento Superior Court has been hard hit by the state's ongoing fiscal crisis. Ours is one of a number of courts statewide that has historically been underfunded and the current state budget deficit has deepened our court's financial burden. Although we have been able to keep our doors open to the public, this has not been accomplished without sacrifice. The family law court, as is the situation with all our operations, has had to manage with significantly reduced staffing levels. This has resulted in backlogs in the processing of court filings and two to five-hour wait times at the family law court's public counter. Therefore, for some of the recommendations we will, out of necessity, have to consider and weigh their relative priority in the overall management of our court taking into account our severe resource limitations.

However, we will determine the staffing and costs associated for those recommendations which we are unable to put in place due to our present budgetary limits. Our court will request supplemental funding from the Administrative Office of the Courts (AOC). Only if the AOC provides the necessary additional funding will we be able to implement the recommendations.

We will advise the bureau of our progress concerning each of the recommendations over the course of future status report dates. The following is our response, in summary, to the bureau's recommendations. Our response has been organized by type of appointee as well as by the recommendation subject matter.

* California State Auditor's comment appears on page 81.

Elaine Howle
State Auditor
Bureau of State Audits
January 7, 2011

Family Court Services (Court-Connected Mediation/Evaluation)

① We take this opportunity to assure the public that all Family Court Services (FCS) mediators and evaluators currently meet the minimum qualifications and training requirements under the law. The court will not assign any matter to a FCS mediator/evaluator who fails to meet the mandatory qualification or training requirements. Also, the processes and procedures we use to verify that our mediators and evaluators are qualified are consistent with applicable statutes and rules of court; and are similar to the procedures used by other trial courts.

The court agrees with the bureau's recommendations concerning the qualifications and training of FCS mediators and evaluators, including the completion of annual performance evaluations and records retention policies. However, we will not be able to obtain copies of training certificates for mediators extending to their date of employment with the court. As pointed out in the audit report there is no required retention period for these records and even under the general records retention policy, the records fall outside of the specified retention period.

With regard to the domestic violence training certification for FCS evaluators, the court will develop a local rule pursuant to the authority of *California Rules of Court*, rule 5.230(f).

The FL-325 form also serves as a certification that any court-connected evaluator without a license is qualified to perform evaluations pursuant to *California Family Code* section 3110.5(c)(5) and *California Rules of Court*, rule 5.225. Rule 5.225 requires all court-connected evaluators to complete and submit the FL-325 form annually. The court will ensure that the family law court's supervising judge, or his/her designee, executes the form's certification section by January 30 each year.

In addition, the court will continue to maintain its log of all FCS mediator conflicts of interest. The court's policy will be updated to document its current practice, and has already been amended to reflect the court's ongoing practice of applying its conflict of interest policy to court employees and referring cases to a private mediator where a conflict arises for an FCS mediator.

Private Mediators/Evaluators

We also concur with many of the recommendations related to the qualifications for private mediators and evaluators who generally are selected by the parties and then appointed by the court.

The court will notify private mediators and evaluators of the requirement that they attend AOC approved courses or obtain individual approval from the AOC. Moreover, the court will make certain that private mediators and evaluators file a declaration under penalty of perjury concerning their qualifications by utilizing Judicial Council form FL-326 (*Declaration of Private Child Custody Evaluator Regarding Qualifications*) no later than ten (10) days after notification of their appointment in each case and before beginning any work on the mediation and/or evaluation. Because the FL-326 already confirms their qualifications, we do not believe it necessary to reinstitute the previous local rule requirement to submit references or verify that they have read the court's evaluator guideline. Moreover, we do not have the resources to maintain and update a guideline, the contents of which are based upon statute, local rule and the *California Rules of Court*. The expectation is that appointees, parties and counsel who appear before the court are aware of and have read all applicable laws and rules.

We will ensure that Judicial Council form FL-327 (*Order Appointing Child Custody Evaluator*) is utilized in each case a private evaluator is appointed, which includes sections on the purpose/scope of the evaluation and a determination of fees and payment.

Elaine Howle
State Auditor
Bureau of State Audits
January 7, 2011

However, the court simply does not have the resources to maintain training records for private mediators and evaluators beyond requiring copies of their training certificates with their initial application – which we have required since October 2010 and the submission of declarations under penalty of perjury (FL-326).

Complaint Process (FCS and Private Mediators/Evaluators and Minor's Counsel)

The court has maintained a log for complaints related to FCS mediation/evaluation since January 2010. Furthermore, we agree with the recommendations concerning our FCS complaint process, including that a more workable, reasonable timeframe be established for the court to respond to complaints. Although we receive very few complaints related to private mediators/evaluators, we will maintain a log for any complaints that are submitted.

We will consider further refinements to our local rules concerning our current private mediator complaint procedures, make the needed corrections to the local rules to clearly specify the private evaluator complaint process, and establish a procedure for complaints related to minor's counsel.

Minor's Counsel

The court does not have the resources to obtain and review all previous training records or to require and review the resubmission of applications for each minor's counsel. However, the court will mandate that all minor's counsel file Judicial Council form FL-322 (*Declaration for Counsel for a Child Regarding Qualifications*) which is a declaration under penalty of perjury that he or she is qualified and meets all legal requirements to act as minor's counsel. A notice has already been sent to all minor's counsel on the court's list concerning the required filing of the FL-322. We do not believe it necessary to provide annual reminder notices to appointed minor's counsel of the need to file a declaration because Judicial Council form FL-323 (*Order Appointing Counsel for a Child*) now includes a specific order that the declaration (FL 322) must be submitted within ten (10) days of counsel's appointment and before beginning any work on a case. The order will be provided to counsel in each case he/she is appointed.

Our court will establish a records retention policy for minor's counsel applications. Additionally, the court will develop a process by which the judicial determination and allocation of the payment of minor's counsel fees will be documented.

Accounting-related Recommendations (FCS Evaluators and Minor's Counsel)

We agree with the bureau's accounting-related recommendations with regard to costs/fees of both FCS evaluations and minor's counsel. Concerning the specific issue of outstanding accounts receivable for evaluation costs, the court is considering other collection options because of the lack of court resources. This includes the possible use of an outside collection agency to collect outstanding balances.

Relating to minor's counsel the court's accounting staff has developed written internal procedures for the payment of invoices. Consequently, the invoice issues raised by the bureau should diminish as staff becomes accustomed to these new procedures.

January 2011

Elaine Howle
State Auditor
Bureau of State Audits
January 7, 2011

Local Rules

The court will conform its local rules to the *California Rules of Court*. Some local rules identified by the bureau have been addressed and became effective January 2011. Others are in the draft process and we fully expect them to be in place after the next cycle of modifications to our local rules. Additionally, the court has assigned to its family law research attorney the ongoing responsibility of reviewing all new legislation, including changes to the *California Rules of Court*, which necessitate any change to our local rules.

In conclusion, I extend our court's appreciation to you and your audit staff for the work involved in conducting this audit and for the recommendations that have been developed. We look forward to making further improvements to Sacramento Superior Court's processes relative to the appointment of mediators, evaluators and minor's counsel in family law. Our court remains resolute in our objective when any appointment is made in matters related to child custody and visitation – and that is making certain the best interests of children are served by the appointment.

Sincerely,

(Signed by: Steve White)

STEVE WHITE
Presiding Judge of the Superior Court of
California, County of Sacramento

Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

To provide clarity and perspective, we are commenting on the response to our audit from the Sacramento County Superior Court (Sacramento Superior Court). The number below corresponds to the number we have placed in the margin of Sacramento Superior Court's response.

We are uncertain how the Sacramento Superior Court can make the assurance to the public that all its Office of Family Court Services (FCS) mediators and evaluators currently meet the minimum qualifications and training requirements under the law. Specifically, on page 25 of our report, we present the minimum qualifications in the text box and conclude that the Sacramento FCS could not demonstrate that four of the 20 mediators on its staff met all of the minimum qualifications. For example, one of these mediators appeared not to have possessed at the time of hire the required two years' experience in counseling, psychotherapy, or both. Further, on page 26 of our report, we present the training requirements in the text box and conclude that the Sacramento FCS could not provide documents to demonstrate that most of its mediators had completed the necessary training. For example, we found that the Sacramento FCS could not demonstrate that one recently hired mediator had completed the initial 40-hour custody and visitation mediation training. Finally, on page 27 of our report, we describe that FCS mediators must refresh their training on mediation and domestic violence issues annually. However, we found that two mediators did not complete the required eight-hour continuing mediation education for 2009.

Similarly, on page 28 of our report, we present the minimum qualifications and training requirements for evaluators and our audit findings and conclusions. For seven of the nine cases we reviewed, we found that the family court did not sign the FCS evaluators' declarations certifying that the evaluators are qualified to perform evaluations. In addition, for one case we reviewed, the FCS evaluator, who does not have a license, did not complete a declaration for the court's certification in 2009. Further, we conclude that the Sacramento FCS also could not demonstrate that any of the FCS evaluators who worked on the nine cases we reviewed met the initial training requirements. Moreover, we conclude on page 29 of our report that the evaluator for two cases did not complete the required eight-hour annual continuing education training in 2009 because she was on leave. Finally, as we state on page 29 of our report, we found that one evaluator failed to satisfy a requirement that she demonstrate experience in conducting 3111 evaluations.

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(Agency response provided as text only.)

Superior Court of California
County of Marin
3501 Civic Center Drive
P.O. Box 4988
San Rafael, CA 94913-4988

January 7, 2011

Ms. Elaine Howle, CPA*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: RESPONSE TO RECOMMENDATIONS IN FAMILY COURT AUDIT REPORT

Dear Ms. Howle:

Thank you for the opportunity to respond to information, findings and recommendations contained in your audit report of Marin's family court. Before responding to the substance of your report, we would like to make the following observation. We were disconcerted to read the title of the audit report itself, as we believe it creates an undeserved poor impression of the Marin family court. Likewise, the titles of the two chapters in the report give a similar impression that you found the court to be engaged in widespread disregard for laws, rules, policies and procedures, which, of course, is not true. The findings and recommendations in the report itself do not appear to support the stridency of these major headings. Such a misleading and inflammatory title seems inconsistent with your website's representation that your agency provides "nonpartisan" and "accurate" assessments.

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Moreover, contrary to the title and major headings, we do not believe your findings and recommendations would lead a reader to conclude that the family court hires unqualified mediators, appoints unqualified attorneys and mental health professionals, disregards sound policies and procedures or significantly fails to comply with California laws and rules of court. It is our fervent hope that you will redraft these major headings more accurately to reflect the legitimate areas in which court processes may be improved, so as not to mislead the readers of this report, most of whom are members of the public that deserve to have confidence in their public institutions, like the family courts.

The focus of your report was primarily to highlight ministerial tasks and documentation that may strengthen the court's internal controls or provide the court with improved timeliness in accountability from private attorneys and mental health professionals. The report contains 13 recommendations. Eight of the recommendations are suggested changes to existing practices that are not governed by laws, rules of court or any other directives. While the court intends to implement the recommended changes, and has either already implemented a new process or is engaged in developing a new rule or protocol, it is questionable as to whether some of the recommendations actually enhance internal controls and accountability. Frankly, some of them fail the test of materiality from the court's perspective (e.g. creating a log to record the one evaluator complaint received in ten years, enhancing the court's conflict-of-interest policy as it pertains to mediators to include the reasons for declaring a conflict in the rare instance in which a conflict occurs, and

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* California State Auditor's comments begin on page 101.

Response to Recommendations—Family Court Audit

January 7, 2011

creating a policy for incidental costs in minor's counsel invoices when the verified costs are *de minimus* and there have been no real or perceived abuses in attorney invoices, etc.) Nevertheless, we intend fully to implement every recommendation contained in your report.

On behalf of the judges, commissioners, court administration and family court services, we thank you for your efforts in conducting an audit of the family court, as directed by the Joint Legislative Audit Committee. As previously mentioned, we have already implemented most of your recommendations and plan to fully implement the remaining recommendations in the next thirty to sixty days. This audit confirms the professionalism and dedication of the Marin family court in addressing the difficult and emotionally charged issues that arise when families are in transition. It also verifies that the court makes appointments in an extremely small percentage (less than half of one percent) of the cases involving children, and expends limited public funds on fees for appointees in such matters (less than \$600 per month total.) We are especially gratified that, following a thorough review of a representative sample of child custody cases, your audit focuses entirely on record keeping, record retention, and administrative documentation of various internal controls. While some of the record keeping processes can, and will, be improved, the audit produced no evidence that insufficient record keeping placed children at risk.

Specific responses to your recommendations are contained in Attachment A to this letter. To the best of my knowledge, the foregoing information is correct. Please contact me if you need further information.

Sincerely yours,

(Signed by: Terrence R. Boren)

Hon. Terrence R. Boren
Presiding Judge

Response to Recommendations—Family Court Audit

January 7, 2011

ATTACHMENT A

Chapter 1 – The Superior and Family Courts Could Not Always Demonstrate That Their Family Court Services Staff and Other Appointees Possess the Necessary Qualifications and Training

RECOMMENDATION 1: Retain documentation in the FCS mediators' official personnel files to demonstrate that they met the minimum qualifications.

RESPONSE: Agree – Although there is no California law or rule pertaining to the retention of these records, the court has adopted a policy requiring mediators to submit annually their original certificates of training to human resources for retention in their official personnel files. A copy of the policy is attached.

RECOMMENDATION 2: Verify the initial training of those FCS mediators hired who have worked at other superior courts.

RESPONSE: Agree, for future new hires – For the seven mediators who worked for the court during the audit period, the auditors found that four of seven mediators did not have documentation to show completion of the initial 40-hour training in child custody and visitation (CRC 5.210(f), adopted January 1, 2001), as well as the initial 16-hour domestic violence training (CRC 5.215(j), adopted January 1, 2002). However, three of the four mediators were initially employed by superior courts *prior* to the adoption of the rules governing these training requirements. Accordingly, these mediators were not required to fulfill these training requirements at the time of hire, as the requirements did not exist at that time. The one remaining mediator who may be deficient in meeting these requirements was a temporary hire employee who worked for the court for a total of 170 hours during one summer.

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For newly hired mediators, however, the court has adopted a policy requiring them to submit copies of their certificates of training to human resources for retention in their official personnel files. In the event that the mediator does not have these records, the court will seek to obtain them from the former employer and, if they are unavailable, this will be documented in the mediator's official personnel file. If the records cannot be obtained, the mediator will be required to sign a sworn statement that the initial training was completed. A copy of the policy is attached.

RECOMMENDATION 3: Ensure that the FCS mediators receive supervision from someone who is qualified to perform clinical supervision so that they can resume their participation in performance supervision, as the court rules require.

RESPONSE: Agree – Due to the continuing fiscal crisis in California, which had adversely impacted the court's operating budget, the court is investigating entering into a personal services contract with a supervising mediator or manager of family court services from another court who will perform performance supervision regularly and periodically with Marin's mediators. We envision on-site performance supervision at least three times per year, including observation of mediation sessions for each mediator and review of a sampling of each mediator's reports and recommendations. Once a contract has been executed with this individual, a copy will be provided to the Bureau of State Audits.

RECOMMENDATION 4: Establish a process to ensure that the private evaluators file their declarations of qualifications with the court no later than 10 days after notification of each appointment and before they begin any work on a case.

Response to Recommendations—Family Court Audit

January 7, 2011

RESPONSE: Agree – The court has adopted an improved procedure to ensure the return and review of private evaluators' declarations regarding qualifications within ten days of the court appointment. A copy of the procedure is attached.

- ⑤ It is noteworthy that the court appointed only 13 child custody evaluators during the four year time period and, in all but one case, the appointment was stipulated, or agreed upon, by the parties both as to the appointment itself and the specific identity of the evaluator who was appointed. In all cases in which there was an evaluation, the parents paid for these services and no public funds were expended. These 13 cases also represent a very small percentage (less than one-half of one percent)¹
- ⑥ of the 3,625 family law cases involving children that were filed in the court during the four-year audit period.

RECOMMENDATION 5: Adopt a local rule regarding the procedures for the private evaluators to notify the family court that they have met the domestic violence training requirements. If the superior court chooses not to adopt a local rule, the family court should establish a process to ensure that the private evaluators attach copies of their domestic violence training certificates to their completed evaluation reports.

RESPONSE: Agree – The court has drafted a local rule which will require private evaluators to submit annual verification to the court that they have met the domestic violence training requirements. This local rule will be included in the July 2011 rulemaking cycle and will be circulated for judicial review and public comment prior to the July 1, 2011 effective date. A copy of the draft local rule 6.32(Q) is attached.

- ⑦ It should be noted that all private evaluators have submitted verification that they have received the mandatory initial 16 hours of domestic violence training, as well as 4 hours of annual update training for the year(s) in which they performed evaluations. Even though the paperwork did not accompany the reports, all of the evaluators met these training requirements. Copies of the training certificates are available upon request.

RECOMMENDATION 6: To ensure that the private minor's counsel it appoints are qualified, the Marin family court should establish a process to ensure that minor's counsel submit, no later than 10 days after notification of their appointment and before working on a case, the required declaration of qualifications.

RESPONSE: Agree – The court has adopted an improved procedure to ensure the return and review of private attorneys' declarations regarding qualifications within ten days of the court appointment. A copy of the procedure is attached.

Although several attorneys filed their declarations regarding qualifications late, in every instance these attorneys filed sworn statements that they did meet the training and experience qualifications. The court's improved procedure will make it easier to track the receipt of the declarations so that the court may confirm timely receipt.

- ⑥ ⑧ It is also important to note that of the 3,675 family law cases involving children filed with the court during the four-year audit period, minor's counsel was appointed in only 16 cases, or in less than one-half of one percent of the cases.²

¹ 13 cases with court-appointed evaluators divided by 3,625 family law cases with children equals .0035 or 0.35%

² 16 cases with court appointed minors' counsel divided by 3,675 cases equals .0044 or .44%

Response to Recommendations—Family Court Audit

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RECOMMENDATION 7: To ensure that it orders evaluations as the court rules require, the Marin family court should consistently use the standard form.

RESPONSE: Agree – The standard form, FL-327, *Order Appointing Child Custody Evaluator*, became a mandatory Judicial Council form on January 1, 2008. Accordingly, the court will use this form for all future appointments of private evaluators.

Additional Comments on Chapter 1 Recommendations

The court's interpretations of applicable laws, rules, policies and procedures differ from the interpretations of the auditors in some instances, some significant and some of minor importance, but noteworthy nonetheless.

The audit makes a claim that four mediators did not indicate that they had knowledge of other resources in the community that clients can be referred to for assistance, a minimum requirement of Family Code section 1815. The court disagrees with this finding, in that FCS has published a Family Court Services Orientation Booklet since the 1990s which mediators use to orient parents to family mediation. Every booklet contains a community resources listing which is updated every time the booklet is revised. These booklets are a primary resource for mediators in the course of their work. Copies of the 2006, 2007, 2008, 2009 and 2010 booklets will be made available to you upon request to verify regular revisions to the community resources listings. ⑨

The audit also makes a finding that the FCS manager, who retired in 2009, completed only 14 of 24 hours of additional custody and visitation training required in his capacity as a supervisor. The audit correctly reports that the FCS manager likely did not complete his hours because he knew he was planning to retire. The court disagrees that he failed to meet his training requirements, as compliance with these requirements cannot be ascertained until after the year has lapsed. Accordingly, if the FCS manager continued his work at the court in 2010, he would have been out of compliance effective January 1, 2010. However, in that he retired before 2010 began, he was fully in compliance for the final year in which he worked (2009), as he did complete his training in 2008 for the 2009 calendar year. ⑩

The audit makes a claim that the superior court's executive officer did not prepare a performance evaluation for the FCS manager in 2006. While this is technically correct, it should be noted that the FCS manager's performance evaluations were completed on October 10, 2005 and on January 8, 2007 (fewer than 15 months between evaluations.) The January 8, 2007 evaluation covered work performed by the FCS manager in 2006. Accordingly, the court disagrees with the auditors and believes that it met its goal of completing an annual evaluation. ⑪

The audit makes special note of the fact that the audit team was unable to obtain reliable and accurate data, relevant to the appointment of attorneys and evaluators, from the court's case management system, Beacon. As we discussed with the audit team, Beacon was developed and implemented at the court fifteen years ago, in 1996. Its purpose was to serve as a repository of all of the civil, family law, probate and juvenile cases filed with the court. It was intended to perform critical functions to help the court manage its inventory of cases. These functions include: capturing contact information for all parties and their counsel; scheduling court appearances; noticing parties of appearance dates; maintaining a register of actions (also known as court docket) which reflects the filing of certain key documents and court forms as well as actions and orders stemming from court hearings and trials; and collecting data required by the Judicial Council of California and the California Legislature. It was never envisioned to be a primary tool that would be used by auditors and, accordingly, did not contain data fields that would help the audit team

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sample appropriate cases. Given the very small percentage of cases reported above that were germane to the audit, we are not surprised that your office had difficulty finding these cases using validated sampling methodologies. Your team would be looking for a needle in a haystack using these methods. However, we also provided you with an internal database management tool, our Family Court Services database, which we advised you at the beginning of the audit would provide you with a more manageable universe of cases from which to draw your sample, many of which would contain some of the characteristics you sought. It appears that your office decided not to use this database to sample cases, although we provided it to you in its entirety.

Chapter 2 – The Sacramento and Marin Superior And Family Courts Could Better Adhere to their Complaint Processes and Other Requirements

RECOMMENDATION 8: To ensure that all complaints regarding FCS staff are tracked properly and reviewed promptly, the Marin Superior Court should keep a complete log of all verbal and written complaints it receives regarding FCS staff.

RESPONSE: Agree – The court has developed a log to track all verbal and written mediator complaints it receives. A copy of the log is attached.

RECOMMENDATION 9: Ensure FCS follows the court’s established complaint process, including retaining the appropriate documentation to demonstrate adherence to the process.

RESPONSE: Agree, as to the recommendation to document adherence to the complaint handling process – To document that all required steps are followed, in accordance with Marin County Superior Court Local Rule 6.32(M), the court has developed a mediator complaint tracking form, which will be completed by the human resources manager while investigating the complaint. The complaint tracking form will be attached to the written complaint or to the notes pertaining to a verbal complaint and will be retained in the FCS complaint file for mediators.

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The audit report states that complaint handling was done “inconsistently”, although there are no examples of inconsistent treatment of complaints. The court disagrees with this characterization. While the tracking form above provides improved documentation of adherence to the complaint procedure, it should be noted that it does not change the manner in which such investigations will be conducted. In the course of the audit, the audit team discussed with the human resources manager and the mediators themselves the current practice for investigating complaints about mediators.

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All agreed that the investigator always carefully reviewed the complaint itself, consulted with the mediators, reviewed the case file and relevant documents, and communicated the findings back to the complainant. The advent of this new form will not improve upon the existing practices in FCS for the handling of mediator complaints; it will simply document the existing process.

RECOMMENDATION 10: To ensure that all complaints received about the private evaluators the family court appoints are tracked and reviewed promptly, the Marin Superior Court should keep a log of all complaints it receives. In addition, the Marin Superior Court should ensure that, for future complaints it may receive, it follows the steps stated in its evaluator complaint process.

RESPONSE: Agree - The court has developed a log to track all written private evaluator complaints it receives. A copy of the log is attached. To ensure that all required steps are followed, in accordance with Marin County Superior Court Local Rule 6.32(L), the court has developed an evaluator complaint tracking form, which will be completed by the human resources manager while overseeing the

Response to Recommendations—Family Court Audit

January 7, 2011

investigation of the complaint. The complaint tracking form will be attached to the written complaint, the written response from the evaluator and the other party (if he or she so elects), and the court's proposed resolution and will be retained in the FCS complaint file for private evaluators.

It is certainly noteworthy that the court received only one evaluator complaint not just within the audit period itself, but in the last eleven years, since the adoption of the Local Rule 6.32(L) in July 2000. As previously stated, the court only ordered 13 evaluations in the four-year audit period. While a log and tracking form may be tools for management of such complaints, the negligible volume of evaluator appointments, resulting in only one written complaint in the last eleven years, makes the practical benefits of such tools less immediately apparent.

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For the one complaint received by the court, the audit correctly notes that the court did not follow, to the letter, all applicable procedures. However, the complaint was defective from the outset in that it was received more than a year after the issuance of the evaluation report. The court could easily have returned the complaint to the complainant as grossly untimely and closed the file. This action would have violated the spirit of the complaint process itself and the court's mission, "to ensure fair and equal access to justice and serve the public with dignity and respect." In an effort to be responsive to the complainant, who was self represented and may not have known about the local rule requirements, the court permitted the complaint to proceed. The court disagrees that it failed to follow five of the eleven requirements of the procedure. In fact, only three of the steps are the court's responsibility [e.g. 1) to respond in writing, 2) within ten days after receipt of the evaluator's response, 3) specifying the action, if any, it will take.] The eight other steps in the rule are the responsibility of the complainant or the private evaluator. The court complied with the three steps, as required in the rule.

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RECOMMENDATION 11: To ensure that it reimburses only appropriate and necessary minor's counsel costs, the Marin Superior Court should develop a written policy that outlines the costs it will reimburse and that requires the attorneys to provide original receipts for their costs.

RESPONSE: Agree – The court has adopted a policy for review of incidental costs on minor's counsel invoices, establishing the rates that will be reimbursed for mileage, postage, copies, facsimiles, parking and messenger services. A copy of the policy is attached.

The court believes that it is important to review this recommendation in the context of the overall cost of minor's counsel during the four-year audit period. We previously stated that the court filed 3,675 family law cases involving children during the four-year audit period but minor's counsel was appointed in only 16 cases. Of these 16 cases, in only 6 cases were attorneys paid by the court with public funds at a total of \$26,705 for the four-year period, or an average of \$6,676 per year. Of the total cost, only \$550 was for incidental costs on minor's counsel invoices, or an average of \$137.50 per year. While this policy may be considered an internal control mechanism for review of invoices, it must be acknowledged that these incidental costs fail to meet even the most basic threshold of materiality, which is a widely recognized auditing concept. Moreover, as is demonstrated in the summary of costs, there have been no known attempts by minor's counsel to inflate these costs. Finally, as was discussed with the audit team, all invoices are reviewed by judicial officers prior to payment. They reserve the sole discretion to question, reduce or decline to pay any costs that they deem to be inappropriate. While judicial revisions to invoices have not happened in recent years in family court, they have happened regularly in other divisions of the court where counsel is paid with public funds.

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Response to Recommendations—Family Court Audit

January 7, 2011

RECOMMENDATION 12: To make its conflict-of-interest policy more effective, the Marin Superior Court should modify its existing conflict-of-interest policy to include documenting the cause of potential conflicts of interest in writing and tracking their final disposition.

RESPONSE: Agree – The court has adopted a conflict of interest policy specifically for mediators to ensure that their conflicts are documented and tracked. A copy of the policy is attached.

While the court has adopted this enhanced conflict-of-interest policy, the court recognizes that this additional documentation of conflicts does not change the manner in which such conflicts are presently identified and addressed. In the course of the audit, the audit team discussed with the human resources manager and the mediators themselves the current practice for apprising the manager of conflicts-of-interest. This new process is of dubious value, in that it simply memorializes in writing the rare occurrence of a conflict and the reason the conflict exists. The advent of this policy will not improve upon the existing practices in FCS for the handling conflicts; it will simply document the existing process.

RECOMMENDATION 13: The Marin Superior Court should develop and implement a process to periodically review the court rules to ensure that its local rules reflect all required court rules.

RESPONSE: Agree – The court has already scheduled a meeting with managers for January 24, 2011 to establish assigned areas of responsibility to review all California Rules of Court to determine whether local rules, policies and procedures are in full compliance. Moreover, the court has drafted a local rule which will establish whether the court will permit a peremptory challenge to a court appointed evaluator and when the challenge must be exercised in accordance with California Rule of Court, Rule 5.220(d). This local rule will be included in the July 2011 rulemaking cycle and will be circulated for judicial review and public comment prior to the July 1, 2011 effective date. A copy of the draft local rule 6.32(K) is attached.

Correction of factual errors in the report

In the Introduction, the report contains several factual errors which we now draw to your attention.

On page 11, please note that the court has 15 court departments, not 11. Also, the family law division is comprised of two family court departments presided over by one judge and one commissioner, not two judges and one commissioner. Our records indicate that the court filed 3,675 family law cases involving children in the four-year audit period, not 2,352 cases. Our case count of 3,675 is comprised of the following case subtypes: 1,849 dissolutions with minor children; 84 legal separations with minor children; 6 nullities with minor children; 193 domestic violence with minor children; 310 private parentage; 657 parentage cases filed by Department of Child Support Services; 431 Department of Child Support Services; 62 custody, support, visitation; and 83 Uniform Interstate Family Support Act. Our records also indicate that mediation services were provided in 1,306 cases, not 635 cases, during that same period.

The report includes a statement that the supervising family court judge reported that the family court appointed eight private evaluators and four minors counsel to contested child custody and visitation cases. This information is inaccurate. We refer you to letters dated October 22, 2010 from Supervising Family Law Judge Faye D'Opal and Court Executive Officer Kim Turner which state that the family court appointed 8 evaluators to conduct child custody evaluations in 13 cases and appointed 10 attorneys to represent children in 16 cases during the audit period.

**Superior Court of California
County of Marin**



FAMILY COURT SERVICES DIVISION

Policy on Verification of Minimum Qualifications for Mediators

As required by California Rules of Court, Rules 5.210(f) and 5.215(j), mediators must complete mandatory training, continuing education and experience requirements at their time of hire and annually.

Initial Training and Education Requirement

At the time of hire, if a mediator has met the initial training requirements specified in Rules 5.210(f) and 5.215(j) because he or she performed family mediation in another California trial court, the mediator will be asked to submit to the court his or her training, education and experience records that demonstrate compliance with initial training requirement. If the mediator is unable to produce these records, the human resources division will contact the former trial court employer to ascertain whether that court has the records and will request that the records be forwarded for inclusion in the mediator's official personnel file. If the former employer also does not have the records, the human resources division shall document the attempts to obtain the records and shall include this documentation in the mediator's official personnel file. The mediator will also be required to prepare a sworn statement that he or she has met these requirements in another court.

Annual Training and Education Requirement

Each year, upon completion of training and education that demonstrate compliance with Rules 5.210(f) and 5.215(j), mediators shall submit their training and continuing education certificates of completion to the human resources division so that these documents can be placed in the mediators' official personnel files.

Training and education documentation shall be retained on the same schedule as the retention of the official personnel files.

Date of Adoption: December 28, 2010

**Superior Court of California
County of Marin****MEMORANDUM**

TO: Family Law Judicial Officers and Court Staff

FROM: Kim Turner, Court Executive Officer

DATE: December 17, 2010

RE: PROCEDURES RELATED TO PRIVATE CHILD CUSTODY EVALUATORS

Below is an updated procedure for ensuring that declarations of private child custody evaluators regarding their qualifications are carefully monitored by the court for compliance with California Rules of Court, Rule 5.225.

1. When a judicial officer appoints a child custody evaluator, the judicial officer shall make the order on mandatory Judicial Council form, *Order Appointing Child Custody Evaluator* (FL-327).
2. THE DAY THE ORDER IS MADE, the courtroom clerk shall mail a copy of the minute order, a copy of the *Order Appointing Child Custody Evaluator*, the blank form - *Declaration of Private Child Custody Evaluator Regarding Qualifications* (FL-326 - STAMPED RUSH) and a return envelope addressed - attention to the Department. Make an entry in beacon (DCTXT) that the forms were mailed with date and your initials.
3. The courtroom clerk shall set an OSCH RE: RECEIPT OF DECLARATION OF PRIVATE CHILD CUSTODY EVALUATOR QUALIFICATIONS 10 days from the date of the order and send notice of hearing to the child custody evaluator. The OSCH will be vacated upon receipt of the declaration.
4. Within 10 days of receipt of *Order Appointing Child Custody Evaluator*, the child custody evaluator must submit to the court a *Declaration of Private Child Custody Evaluator Regarding Qualifications* (form FL-326).
5. Upon receipt of the declaration, the courtroom clerk shall file it, enter the code **DPCCE** in Beacon (fill in text with evaluator's name) and vacate the OSCH hearing.
6. If the Declaration is misrouted to the clerk's office and filed there, a copy will be routed to the department and the courtroom clerk will then enter the **DPCCE** code in Beacon and vacate the OSCH hearing.

6. FAMILY LAW RULES

6.32 CONTESTED CUSTODY/VISITATION ISSUES

K. Peremptory Challenge to Evaluator. No peremptory challenge is allowed to a Court-appointed evaluator, whether such person is a family court services staff member, any county employee, or a mental health professional. (See CRC 5.220(d).)

Q. Notice to Court of Evaluator Domestic Violence Training. Child custody evaluators shall provide copies of their certificates of completion of the initial advanced instruction and the annual update training to the Court Executive Officer within 30 days after completion of such training. (See CRC 5.230(f).)

**Superior Court of California
County of Marin****MEMORANDUM**

TO: Family Law Judicial Officers and Court Staff

FROM: Kim Turner, Court Executive Officer

DATE: December 17, 2010

RE: PROCEDURES RELATED TO APPOINTMENT OF MINORS' COUNSEL

Below is an updated procedure for ensuring that declarations of minors' counsel regarding their qualifications are carefully monitored by the court for compliance with California Rules of Court, Rule 5.240.

1. When a judicial officer appoints minors' counsel, pursuant to Family Code section 3150, the judicial officer shall make the order on optional Judicial Council form, *Order Appointing Counsel for a Child* (FL-323).
2. THE DAY THE ORDER IS MADE, the courtroom clerk shall mail a copy of the minute order, a copy of the *Order Appointing Counsel for a Child*, the blank form - *Declaration of Counsel for a Child Regarding Qualifications* (FL-322 - STAMPED RUSH) and a return envelope addressed - attention to the Department. Make an entry in beacon (DCTXT) that the forms were mailed with date and your initials.
3. The courtroom clerk shall set an OSCH RE: RECEIPT OF DECLARATION OF COUNSEL FOR A CHILD REGARDING QUALIFICATIONS 10 days from the date of the order and send notice of hearing to the minors' counsel. The OSCH will be vacated upon receipt of the declaration.
4. Within 10 days of receipt of *Order Appointing Counsel for a Child*, minors' counsel must submit to the court a *Declaration of Counsel for a Child Regarding Qualifications* (form FL-322).
5. Upon receipt of the declaration, the courtroom clerk shall file it, enter the code **DCCRQ** in Beacon (fill in text with attorney's name) and vacate the OSCH hearing.
6. If the Declaration is misrouted to the clerk's office and filed there, a copy will be routed to the department and the courtroom clerk will then enter the **DCCRQ** code in Beacon and vacate the OSCH hearing.

**FAMILY COURT SERVICES
MEDIATOR COMPLAINT TRACKING FORM**

Case No.: _____

Case Name: _____

Date of Complaint: _____

Complaining Party: _____

Name of Mediator: _____

Complaint Verbal/Written: _____

Date(s) of Mediator Consultation: _____

Action Taken by Supervisor: _____

Date Action Taken: _____

Date Complainant Informed: _____

Action Taken by Judge on Appeal: _____

Date Action Taken on Appeal: _____

FAMILY COURT SERVICES
EVALUATOR COMPLAINT TRACKING FORM

Case No.: _____

Case Name: _____

Complaining Party: _____

Name of Evaluator: _____

Date of Issuance of Evaluator Report: _____

Date Complaint Provided to Evaluator: _____

Date Complaint Provided to Other Party: _____

Date Complaint Lodged with Court: _____

Date of Evaluator's Written Response: _____

Date Response Provided to Both Parties: _____

Date Response Lodged with Court: _____

Date of Court's Written Statement: _____

Action Taken by Court: _____

Date of Motion Seeking Relief: _____

Date Motion Served on Evaluator: _____

Date Motion Served on Other Party: _____

Date of Hearing: _____

**Superior Court of California
County of Marin**



MEMORANDUM

TO: Family Law Judicial Officers and Accounting Staff

FROM: Kim Turner, Court Executive Officer

DATE: December 17, 2010

RE: POLICY FOR REVIEW OF INCIDENTAL COSTS ON MINORS' COUNSEL INVOICES

Below is a policy for the review of incidental costs that may be billed to the court on minors' counsel invoices. Accounting staff are directed to review incidental costs to ensure that they are in compliance with the rates established below. For any costs that are not in compliance with these rates, accounting staff shall revise the billing amount to reflect those rates prior to submitting the billing to the judicial officer for approval. Reimbursements shall be at the following rates and under the following conditions:

1. **Mileage** - at the same per mile rate that is applied in the judicial branch, as published in the most current Administrative Office of the Courts' Finance Memo.
2. **Parking** - at actual cost. Attorneys must submit receipts for parking costs in excess of \$10 per invoice.
3. **Copies** - at 10 cents (\$0.10) per copy. Attorneys must submit receipts for copy costs in excess of \$10 per invoice.
4. **Postage** - at actual cost. Attorneys must submit receipts for postage in excess of \$10 per invoice.
5. **Telephone** - at actual cost. Attorneys must submit a copy of the phone bill for telephone costs in excess of \$10 per invoice.
6. **Messenger service** - at actual cost. Attorneys must submit a copy of the messenger service bill for costs in excess of \$10 per invoice.

**Superior Court of California
County of Marin****FAMILY COURT SERVICES DIVISION**Conflict of Interest Policy

Consistent with section 17.3 of the Court's *Personnel Plan and Policies*, effective immediately, the following Conflict of Interest Policy is hereby adopted for use in Marin County Superior Court Family Court Services:

At the time a case is assigned for mediation to an FCS mediator, in the event the mediator knows or is acquainted with one or both parties and believes her/his participation in the case may be an actual, potential or perceived conflict of interest, the mediator shall immediately notify the Human Resources Manager in writing of the conflict. The Human Resources Manager shall acknowledge the declared conflict of interest in writing and communicate to the mediator that the case will be assigned to another mediator.

All conflict of interest communications between FCS Mediators and the Human Resources Manager shall be stored in an electronic folder maintained by the Human Resources Manager.

Date of Adoption: December 13, 2010

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN

To provide clarity and perspective, we are commenting on the response to our audit from the Marin County Superior Court (Marin Superior Court). The numbers below correspond to the numbers we have placed in the margins of Marin Superior Court's response.

The Marin Superior Court incorrectly states that our report titled Sacramento and Marin Superior Courts Both Courts Need to Ensure That Family Court Appointees Have Necessary Qualifications, Improve Administrative Policies and Procedures, and Comply With Laws and Rules is misleading and inflammatory. Specifically, the text on pages 41 through 47 supports our audit finding and conclusion that the Marin Superior Court needs to ensure that its family court appointees have necessary qualifications and comply with state laws and the California Rules of Court (court rules) related to their qualifications. For example, on page 41 we state that we found that the Marin Office of Family Court Services (FCS) could not demonstrate to us that five of its seven mediators met the minimum qualifications necessary to perform mediations in family law matters. As stated on page 47, we also found that three of the five minor's counsel the court appointed filed their declarations of their qualifications, but they did so up to one year after their appointments, which far exceeded the 10-day filing period. In addition, the text on pages 52 through 56 and pages 66 through 71 supports our audit findings and conclusions that the Marin Superior Court needs to improve its administrative policies and procedures related to complaints against FCS mediators and private evaluators, payments to minor's counsel, and potential conflicts of interest. For example, on page 54 we state that for each of the eight complaints filed against Marin FCS mediators that we reviewed, the former FCS manager failed to document whether or not he consulted with the mediator during the complaint investigation. Furthermore, the text on pages 71 through 73 supports our audit finding and conclusion that the Marin Superior Court needs to improve its compliance with court rules. Specifically, on page 72 we state that the Marin Superior Court needs to develop a local rule allowing or disallowing peremptory challenges. We also believe that the titles of the two chapters in our report reflect accurately our audit findings and conclusions. Consequently, we did not revise our report title and chapter titles as the court requested.

①

- ② The Marin Superior Court states that some of our recommendations fail the test of materiality from its perspective and cites three examples. We disagree. The Bureau of State Audits (bureau) conducts its audits in accordance with generally accepted government auditing standards. In conducting performance audits, the auditing standards require us to determine if an issue is “significant” as opposed to “material” as used in the context of financial statement audits. We believe that the three examples cited by the Marin Superior Court are significant. Specifically, because the Marin Superior Court did not maintain a log of the complaints it received, in accordance with the auditing standards, on pages 22 and 53, we had to report limitations in our ability to determine the number of complaints it received between April 1, 2006, and March 31, 2010. Instead, we had to rely on the court’s assertion that it received only one complaint during the four-year period. Further, contrary to the Marin Superior Court, we believe its adherence to the court rules is a significant audit issue. Specifically, on page 69 of the report, we present the court rules related to disclosing any actual or potential conflicts of interest. As stated on page 69 of the report, the Marin Superior Court’s conflicts-of-interest policy does not require the FCS mediator to put in writing potential conflicts of interest, nor does it specify how the Marin Superior Court will track the final disposition of the potential conflict. Finally, contrary to the Marin Superior Court, we believe its adherence to the California Administrative Office of the Courts’ (AOC) Trial Court Financial Policies and Procedures (financial policy) is a significant audit issue. As we state on pages 67 and 68 of the report, the financial policy establishes the minimum standards for each court to use to develop an effective system of internal controls. It is our opinion that creating a policy for incidental costs in minor’s counsel invoices is part of an effective internal control system.
- ③ The Marin Superior Court is incorrect in describing the scope of the audit. Instead, as we present on page 15, the Joint Legislative Audit Committee (audit committee) directed us to audit California’s Family Court System with respect to the use of court appointees in child custody disputes. Specifically, the audit committee directed us to review the Marin family court and, for the most recent four-year period, to identify, assess, and evaluate the family court’s processes related to court appointees. The audit committee was interested in the frequency with which the family court used court appointees; the court’s selection process for court appointees, including the types of cases that are more likely to have court appointees; the rationale for making appointments; and the types of appointees, such as mediators or evaluators, assigned to cases. The audit committee also directed us to evaluate and assess for a sample of contested custody cases whether the

Marin family court adhered to the following established processes: (1) ensuring that court appointees meet training requirements; (2) setting court appointee fees and allocating and paying these fees; (3) allowing parties to object to court appointees, including by requesting a replacement; (4) evaluating appointees' performance and disciplining them; and (5) receiving, investigating, and resolving complaints against court appointees.

The Marin Superior Court is incorrect in stating that the mediators were not required to fulfill training requirements at the time of hire because the court rules did not exist. California Family Code sections 1815 and 1816 cite the minimum qualifications, training, and experience each mediator must have at the time of hire and thereafter. These two state laws were first enacted in 1992 (effective January 1, 1994), and have been subsequently amended to further specify the applicable requirements. Nonetheless, the minimum qualifications, training, and experience requirements have existed for some time. The court rules added further specificity to the state law, but the fundamental legal obligation to satisfy those requirements derives from statute. Further, as we state on page 42, it would seem prudent for the Marin Superior Court to obtain documentation from either the previous employing court or the potential employee to verify that any potential FCS mediators it hires possess the qualifications necessary for the position. Finally, the court rules we reviewed do not exclude temporary hire employees from requirements to possess the minimum qualifications, training, and experience each mediator must have at the time of hire and thereafter.

④

The Marin Superior Court seems to suggest that because the parties stipulated, or agreed to, the child custody evaluator, they have agreed that the evaluator is qualified. That is not necessarily the case especially given the fact that an evaluator's declaration of qualifications is provided after the parties agreed to the evaluator. In addition, the Marin Superior Court states incorrectly the number of private evaluators it appointed between April 1, 2006, and March 31, 2010. As we state on page 44, the Marin Superior Court's former supervising family court judge stated that the court appointed private evaluators to 13 cases. The executive officer gave us data indicating that the court appointed eight different private evaluators to these 13 cases.

⑤

In its response, Marin Superior Court states that its records indicate 3,625 family law cases involving children were filed in the court during the four-year period that we reviewed. However, we determined that Marin Superior Court used a methodology different than the one it provided to us to calculate the number of cases that involved child custody and visitation. Specifically, in July 2010, Marin Superior Court officials suggested that we use the

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Beacon case management database and review cases containing any one of six specified case types/subtypes to identify all custody and visitation cases. Using the methodology suggested by the court, we computed that the Marin Superior Court opened 2,352 cases that involved child custody and visitation during the four-year period we reviewed, as we state on page 11. However, in its response Marin Superior Court counted cases containing any one of nine specific case types/subtypes to reach the total number of family law cases involving children it cited.

- ⑦ In its response, the Marin Superior Court offers additional information that it did not provide to us during the audit or at the exit conference held on December 9, 2010. As we state on page 45 of the report, the court rules require each court to adopt local rules regarding procedures for the evaluators to notify the court that they have met the training requirements. In the absence of a local rule, the court rules require the evaluators to attach copies of their certificates of completion for the initial advanced domestic violence training and for their most recent four-hour update training to each evaluation report they complete. The Marin Superior Court did not have a local rule and we expected to find copies of the evaluators' training certificates attached to their evaluation reports. However, for three of the five cases we reviewed, the evaluators did not attach their domestic violence training certificates to their completed reports. The fact that the court has recently obtained the evaluators' certificates does not change our audit finding and conclusion.
- ⑧ The Marin Superior Court stated incorrectly the number of minor's counsel appointments it made between April 1, 2006, and March 31, 2010. Specifically, the Marin Superior Court's executive officer gave us data indicating the court appointed minor's counsel to 17 cases. However, as we state on page 46, based on our review of the orders appointing the minor's counsel, we identified four minor's counsel who were appointed to five contested child custody cases during our audit period. The minor's counsel for the other 12 cases were appointed before our audit period beginning on April 1, 2006.
- ⑨ In its response, the Marin Superior Court offers additional information that it did not share with us during the audit when we discussed this issue with the court or at the exit conference held on December 9, 2010, where we discussed our intent to report this issue. Specifically, as we state on pages 41 and 42, the court's human resources manager stated that the court does not have written procedures for staff to check that applicants have met each minimum qualification. The human resources manager described the court's process as examining instead the individual's FCS mediator application and supplemental questions to identify

experience or education that implies that the applicant possesses the knowledge required by state law. During the interview phase, the interviewer asks questions and poses case studies to further determine whether the applicant possesses the required knowledge. However, the human resources manager was unable to provide documentation related to the interviews held with these FCS mediators. The fact that the court has recently changed its position has no affect on our audit finding and conclusion that it could not demonstrate that the four FCS mediators met one of the minimum qualifications.

The Marin Superior Court's interpretation that compliance with the training requirements cannot be ascertained until the year has lapsed is not on point. As we depict in the text box on page 26 of the report, the court rules require the supervisors of FCS mediators to obtain 24 hours of AOC-approved additional training annually. The Marin Superior Court's human resources manager stated in an email dated June 28, 2010, that the Marin FCS interprets the court rules' references to "annual" or "each year" to mean calendar year. As we state on page 42 of the report, the former FCS manager did not complete the requisite number of supervisory training hours during 2009 before his retirement on December 30 of that year. Thus, the court's revised interpretation has no affect on our audit finding and conclusion that the former FCS manager did not obtain all necessary hours of continuing education in 2009.

⑩

The Marin Superior Court is contradicting itself. As we state on page 43 of the report, the Marin Superior Court's policy states that it will prepare formal performance evaluations annually for its nonprobationary employees. On one hand, the court acknowledges that our audit finding that the court executive did not prepare an evaluation for the former FCS manager in 2006 is "technically" correct. On the other hand, the court disagrees with the audit finding. Although we understand the court's attempt to explain why its executive officer did not prepare an evaluation in 2006, the court's explanation does not change the fact that an evaluation was not performed in accordance with its policy.

⑪

The Marin Superior Court states that it provided us with a copy of the FCS database and that we should have used this database instead to identify cases falling within the audit scope. Marin Superior Court is correct in stating that it provided us with a copy of the FCS database. However, we chose not to use it because, at the same time the court provided us with the FCS database the Marin Superior Court officials provided us with suggested methodologies that directed us to use the Beacon case management database to identify these cases.

⑫

- ⑬ To address the Marin Superior Court's concern we modified the report subtitle on page 53 from "Both the Sacramento and Marin FCS Inconsistently Followed Established FCS Complaint Processes and These Processes Could Be Improved" to "The Sacramento FCS Inconsistently Followed the Established FCS Complaint Process, and Both the Sacramento and Marin FCS Can Improve Their Processes."
- ⑭ The Marin Superior Court's statement that "all agreed that the investigator always carefully reviewed the complaint itself, consulted with the mediators, reviewed the case file and relevant documents, and communicated the findings back to the complainant" is incorrect. Specifically, as we state on pages 54 and 55, the human resources manager stated that he spoke with the three FCS mediators currently on staff, and they confirmed that as part of the investigation process, it was the former FCS manager's practice to consult verbally with the mediators regarding each complaint. The human resources manager also stated that the FCS mediators recalled being consulted on seven of the eight cases. Further, the human resources manager stated that, because there is no requirement in the local rules, the former FCS manager was not obligated to document the fact that he consulted with the mediators as part of the complaint investigation process. At the exit conference held on December 9, 2010, we informed the court that the human resources manager's statements were not sufficient evidence to demonstrate that complaints are thoroughly investigated. The standards we follow require us to obtain evidence that is appropriate and defines appropriateness as the measure of the quality of evidence that encompasses the relevance, validity, and reliability of the evidence used for addressing the audit objective and supporting audit findings and conclusions. The standards provide examples of the different types and sources of evidence that auditors may use. The statements made by the human resources manager would be considered testimonial evidence. For this type of evidence, the standards indicate that testimonial evidence obtained from an individual who is not biased and has direct knowledge about the area is generally more reliable than testimonial evidence obtained from an individual who is biased or has indirect or partial knowledge about the area. In our professional judgment, the current human resources manager has a greater likelihood of being biased toward the outcome of our audit finding and conclusion and had indirect or partial knowledge about the complaint process because he assumed administrative responsibility for the Marin FCS in January 2010.
- ⑮ The Marin Superior Court reiterates an assertion about its receiving only one evaluator complaint that we could not verify. Specifically, because the Marin Superior Court did not maintain a log of the complaints it received, in accordance with the auditing

standards, on pages 22 and 53 we had to report limitations in our ability to determine the number of complaints it received between April 1, 2006, and March 31, 2010. Instead, we had to rely on the court's assertion that it received only one complaint during the four-year period.

The Marin Superior Court is correct that only three of the steps are the court's responsibility. To address the court's concern, we revised the text on page 56 to be more clear. Specifically, we added text stating that the family court took 14 days instead of 10 days to issue its statement. Consequently, contrary to Marin Superior Court's assertion that it complied with the three steps it was responsible for, we found that it did not comply with one of the steps. In addition, we added text stating that although the complainant must perform components of the procedure, the court is responsible for overseeing the entire complaint procedure.

(16)

The Marin Superior Court states that the minor's counsel's incidental costs fail to meet even the most basic threshold of materiality, which is a widely recognized audit concept. In conducting performance audits, the auditing standards require us to determine if an issue is "significant" as opposed to "material" as used in the context of financial statement audits. Contrary to the court, we believe its adherence to the AOC's financial policy is a significant issue, despite the amount associated with the minor's counsel's incidental costs. Furthermore, the Marin Superior Court's statement that there have been no known attempts by minor's counsel to inflate the costs is unsupported. As we state on page 68, we were unable to determine if the costs shown in the minor's counsel's invoices were appropriate because the court lacks a policy that outlines reimbursable costs and requires the attorneys to provide original receipts. Finally, the Marin Superior Court states that the judicial officers review all invoices prior to payment. However, as we state on page 68, until the court establishes a written policy, it is allowing inconsistent treatment of minor's counsel invoices because one judge may allow expenses that another judge rejects.

(17)

We disagree with the Marin Superior Court's claim that changing its process related to conflicts of interest is of dubious value. On page 69 of the report we present the court rules related to disclosing any actual or potential conflicts of interest. The Marin Superior Court's conflicts-of-interest policy does not require the FCS mediator to put in writing potential conflicts of interest, nor does it specify how the Marin Superior Court will track the final disposition of the potential conflict. Furthermore, as we state on page 70, because the court does not document and track its potential conflicts of interest and their disposition, we could not

(18)

determine whether the eight potential conflicts of interest that the human resources manager cited were conflicts as defined in the court's policy, nor could we confirm how the court resolved them.

- ①⑨ In its response, the Marin Superior Court cites numbers that are inconsistent with its Web site. Specifically, according to its Web site there are 11 departments. Further, the Web site included a list of the judicial assignments, dated October 25, 2010, that indicated two family law judges presided over departments K and L and a family law commissioner presided over department O. Nonetheless, to address the court's concern, on page 11 of the report we modified the text from 11 court departments to 15 and from two judges and one commissioner to one judge and one commissioner.
- ②⑩ Marin Superior Court stated that its records indicate a total of 1,306 cases where mediation services were provided rather than the 635 cases we identified on page 11 in our report. We disagree. Following the suggested methodology provided by Marin Superior Court in July 2010, we used the Beacon case management database to identify the 635 cases with court-ordered mediation that were filed between April 1, 2006, and March 31, 2010. Conversely, the 1,306 cases included in Marin Superior Court's response were identified using the FCS database and counting those cases with an intake date between April 1, 2006, and March 31, 2010. The methodology used by Marin Superior Court counted cases where mediation was requested during our audit period, rather than our methodology which only counted those cases that were filed within the audit period and included court-ordered mediation.
- ②⑪ The Marin Superior Court's statements related to the number of evaluators and minor's counsel it appointed to contested child custody and visitation cases requires clarification. Information the court's executive officer gave us subsequent to the letters dated October 22, 2010, reflected that the court had appointed eight private evaluators to 13 cases. In addition, the Marin Superior Court stated incorrectly the court's minor's counsel appointments made between April 1, 2006, and March 31, 2010. Specifically, the Marin Superior Court's executive officer gave us data indicating the court appointed minor's counsel to 17 cases. However, as we state on page 46, based on our review of the orders appointing the minor's counsel, we identified four minor's counsel who were appointed to five contested child custody cases during our audit period.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press